DOCUMENT RESUME

ED 342 332 HE 025 306

TITLE	Hearings on the Reauthorization of the Higher Education Act of 1965: Program Integrity. Hearings before the Subcommittee on Postsecondary Education of the Committee on Education and Labor. House of Representatives, One Hundred Second Congress, First Session (May 21, 29-30, 1991).
INSTITUTION	Congress of the U.S., Washington, DC. House Subcommittee on Postsecondary Education.
REPORT NO	ISBN-0-16-035677-6
PUB DATE	May 91
NOTE	502p.; Serial No. 102-39. Portions of document contain small/light print.
AVAILABLE FROM	U.S. Government Printing Office, Superintendent of Documents, Congressional Sales Office, Washington, DC 20402.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF02/PC21 Plus Postage.
DESCRIPTORS	Access to Education; Accountability; Accreditation (Institutions); College Athletics; Cost Effectiveness; Economic Impact; Educational Finance; Eligibility; *Federal Legislation; Finance Reform; *Financial Policy; Fiscal Capacity; Hearings; *Integrity; Loan Default; Loan Repayment; Minority Groups; Money Management; Postsecondary Education; Program Evaluation; Risk; State Agencies; State Aid; State Federal Aid; *Student Financial Aid; *Student Loan Programs; Vocational Schools
IDENTIFIERS	Congress 102nd; *Higher Education Act 1965

ABSTRACT

As part of a series of hearings on the reauthorization of the Higher Education Act of 1965, testimony was heard over 3 days on the integrity of the federal student financial assistance programs. In the course of addressing this issue witnesses testified the first day about public confidence in the programs, accreditation of schools and their eligibility for participation in federal programs, the cost of student loan defaults, for-profit trade schools, minority participation in higher education, and suggestions for reform. In addition to this testimony, the texts of three bills addressing reform of the Higher Education Act are presented: House of Representatives Bills numbered 327, 1118, and 2246. The second day heard officials from various federal agencies connected with the federal student financial aid programs, including the Deparment of Education and the General Accounting Office. The third day of testimony drew witnesses from state guarantee agencies, state approving agencies for Veterans Administration programs, state higher education officers, and the Council of Post-secondary Accreditation as well as witnesses to address college athletics financial disclosure and public accountability. Also included are the texts of the bills introduced, letters, supplemental materials, and the prepared statements of the witnesses and of others who were not able to appear. (JB)

ED342382

HEARINGS ON THE REAUTHORIZATION OF THE HIGHER EDUCATION ACT OF 1965: PROGRAM INTEGRITY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON POSTSECONDARY EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

HEARINGS HELD IN WASHINGTON, DC, MAY 21, 22, AND 30, 1991

Serial No. 102–39

Printed for the use of the Committee on Education and Labor

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U.S. GOVERNMENT PRINTING OFFICE
47-032 WASHINGTON : 1991

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-035677-6

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HEARING ON THE REAUTHORIZATION OF THE HIGHER EDUCATION ACT OF 1965

TUESDAY, MAY 21, 1991

House of Representatives,
Subcommittee on Postsecondary Education,
Committee on Education and Labor,
Washington, DC.

The subcommittee met, pursuant to call, at 9:45 a.m., Room 2175, Rayburn House Office Building, Hon. William D. Ford [Chairman] presiding.

Members present: Representatives Ford, Gaydos, Lowey, Sawyer, Payne, Serrano, Andrews, Reed, Roemer, Coleman, Molinari, Goodling, Petri, Roukema, Gunderson, and Armey.

Staff present: Thomas Wolanin, staff director; Jack Jennings, education counsel; Maureen Long, legislative associate; Gloria Gray-Watson, administrative assistant; Jo-Marie St. Martin, minority education counsel; and Beth Buehlmann, minority education coordinator.

Chairman Ford. I'm pleased to reconvene the Subcommittee on Postsecondary Education for this, the 11th of hearing in a series of 45 on the reauthorization of the Higher Education Act. I might observe, Tom, that every time I read this statement, the top number keeps going up. We're up to 45 now.

Today is our first hearing in a series of three which addresses one of the most crucial issues we face during reauthorization: the integrity of the Federal student financial assistance programs.

We must restore and reinforce public confidence in Federal student aid. Indeed, restoring public confidence in the programs is an absolute precondition for accomplishing the other goals of the subcommittee for this authorization, goals such as renewing the commitment to grant assistance and extending Federal aid to middle income and working families.

It is particularly appropriate that these hearings are scheduled during the next 2 weeks. Just yesterday, Senator Nunn's permanent Subcommittee on Investigations released its report entitled "Abuses in Federal Student Aid Programs." This report is a culmination of a year of hearings by the Investigation Subcommittee in the Senate.

I look forward to hearing the comments and suggestions of our witnesses, and I am especially pleased that we have before us today a distinguished member of this subcommittee, Marge Roukema, to testify on her legislation, H.R. 1118.

Mrs. Roukema has been very active in the past years on the issue of improving programs' integrity, and I look forward to working with her to accomplish this goal.

We also have two other distinguished Members of Congress to share with us their recommendations. Representative Bart Gordon will describe his experiences in Tennessee which led him to introduce two bills before us today, H.R. 327 and H.R. 2246.

Representative Maxine Waters, who serves the same California district that the former chairman of this committee, Gus Hawkins, served, has extensive experience in the California legislature dealing with student aid program integrity.

I'm hopeful that these hearings will expose the integrity problems our student aid programs are facing and will give us an opportunity to explore ways to effectively address these problems.

Tom, do you wish to make a statement?

Mr. Coleman. Thank you, Mr. Chairman. I have a statement for the record, which I will ask to be submitted. But I, too, believe that this is one of the more important hearing subjects that we're going to address during the reauthorization.

I think in the public, and the public perception, is that there are many things broken with this system that need to be fixed. They get their information from Readers Digest articles, from exposes on national television. And to a certain extent, many of that is true; it is a correction needed type perception.

The report that the Chairman referred to was submitted yesterday and released by the Senate committee. While it may list some things that we have corrected in previous legislation, it might have some findings that may be less than evidentiary. It does contain a number of the points which we ought to address.

I, personally, believe that part of the problem that needs to be fixed is the accreditation process. Key to the entire opportunity for institutions to be ultimately certified and to receive of Federal funds which we authorize in this legislation.

So I will be asking some, hopefully, piercing questions to those who will be coming forward on other panels, to try to get to the meat of this issue, which I think is extremely important. It is one which is a difficult one to get to, but one which we must answer in our own minds in this reauthorization in order to make this system better and to make it work better.

And that's what I would like to try and accomplish in these hearings on the issue of integrity. So thank you, Mr. Chairman.

Chairman Ford. Thank you. Mr. Gaydos.

Mr. Gaydos. Thank you, Mr. Chairman. Under normal circumstances, I would insert my remarks in the record, but I think it's important enough to take a few minutes to give them.

During the past few years, the reported cost of student loan defaults, and criticism of the loan program has increased dramatically, and we all know that. Unfortunately, instead of addressing some of the real issues surrounding loan defaults, some people have taken the easy route and found a scapegoat: career training schools.

Some people believe that the sole purpose of these schools is to rip off the government through the student loan programs. This is completely untrue and false.

In Pennsylvania, there are 341 private career schools. They do not receive tax dollars like their State supported counterparts, and, unlike their nonprofit counterparts, they do pay taxes.

In the 1989-1990 period, according to the Pennsylvania Department of Education, these 341 said schools paid over $12 million in Federal taxes and an additional $5.5 million in State and local taxes.

Now, I'm not saying there are no bad apples in the career training sector of higher education; obviously, there are some. But we must concentrate our efforts on getting rid of the bad apples, and not eliminating good schools from this program.

More than 2 weeks ago, this subcommittee heard from experts who told us we, as a Nation, need a more skilled work force if we are going to remain competitive in the world market.

Arnold Packer, Executive Director for the Secretary's Commission on Achieving Necessary Skills, sat in this very room and said that we need career training schools.

Before we embark, individually or otherwise, on a witch hunt and make every student attending these schools ineligible for grant and loan assistance, there are several issues that should be considered. And I'll briefly mention just two or three of them right now.

First, study after study has shown that the number one reasons students default on their education loans is because of inability to pay, not unwillingness to pay or dissatisfaction with the quality of education they receive. It's a misconception floating around.

Over the years, we have seen the balance between grant and loan assistance completely reverse itself. Grants initially represented about 75 percent of student assistance; in the package, and loans, around 25 percent. Now, today, grants make up about 25 percent of student assistance packages and loans, roughly 75 percent.

The Department of Education has five categories of defaults, but only three of them indicate true default status. The categories are: (1) the loan was defaulted and resolved; (2) the loan was defaulted but is now in repayment; (3) the loan was defaulted but paid in full; (4) the loan was defaulted and written off or compromised; and (5) the loan was permanently assigned to the department for collection.

Should we really be counting loans in categories two and three—the loan default now in repayment and the loan defaulted but paid in full? No. Students who are either making payments on their loans or who have already paid their loans in full are obviously not in default.

And, third, there has never been a really acceptable audit of the student loan program in this country. The Higher Education Act of 1965 clearly requires the General Accounting Office to conduct an audit every year. GAO has tried to conduct the audits on numerous occasions but the Department of Education keeps such deplorable records that GAO has never been able to complete even one of these audits to date. And that's a fact.

The department has been operating on assumptions and estimates for the past 25 years. And while we have no idea how accurate their estimates are, GAO has told my staff that because of the record keeping problems they have encountered, the estimates can not be very accurate at all. It's up to all of us to make our own conclusions as to the degree of accuracy, if any.

I, for one, really don't like to have to make policy decisions that directly affect our students' educational choices, the quality of this Nation's work force and the economic competitiveness of this Nation, based on estimates that are described by experts as not very accurate at all.

These are just three issues that should be given serious consideration before making career training schools a scapegoat for every real or perceived problem in the student loan programs which we're experiencing today.

Yes, obviously some career schools misuse Federal dollars by doing a lousy job of preparing their graduates for future employment. And, yes, something should be done about these schools, but not at the expense of those schools, particularly in my State, who have been turning out top notch graduates for years and who continue to do so under the adverse criticism.

There are an extraordinarily number of high quality career schools out there; all of us know that. And I know this for a fact because I've personally visited many of them in Pittsburgh and other places. The graduates from these schools go on to make outstanding accomplishments in their chosen careers and exemplary contributions to their communities. Hopefully, the witnesses before us today are discerning enough to realize that all career training schools can not be and should not be painted with the same brush that has been tainted by the bad schools, and that, I think, we should get rid of.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Joseph M. Gaydos follows:]

Opening Statement
Joseph M. Gaydos
May 21, 1991
Postsecondary Education Hearing

During the past few years, the reported cost of student loan defaults and criticism of the loan programs has increased dramatically.

Unfortunately, instead of addressing some of the real issues surrounding loan defaults, some people have taken the easy route and found a scapegoat -- career training schools.

Some people believe that the sole purpose of these schools is to rip off the government through the student loan programs. This is completely untrue.

In Pennsylvania there are 341 private career schools. They do not receive tax dollars like their State-supported counterparts. And, unlike their non-profit counterparts, they pay taxes.

In 1989-90, according to the Pennsylvania Department of Education, these 341 schools paid over 12 million dollars in Federal taxes and an additional five and a half million dollars in State and local taxes.

I'm not saying there are no bad apples in the career training sector of higher education, there are. But we must concentrate our efforts on getting rid of the bad apples, not eliminating good schools from the program.

More than two weeks ago, this subcommittee heard from experts who told us we, as a nation, need a more skilled workforce if we are to remain competitive in the world market.

Arnold Packer, Executive Director for the Secretary's Commission on Achieving Necessary Skills, sat in this room and said that we need career training schools.

Before we embark on a witch hunt and make every student attending these schools ineligible for grant and loan assistance, there are several issues that should be considered. I'll briefly mention just three of them right now.

First, study after study has shown that the number one reason students default on their educational loans is because of inability to pay, not unwillingness to pay or dissatisfaction with the quality of education they received.

Over the years we have seen the balance between grant and loan assistance completely reverse itself. Grants initially represented about 75 percent of a student's assistance package and loans 25 percent. Today grants make up about 25 percent of a student's assistance package and loans 75 percent.

Common sense tells us that when a student who should be receiving grant assistance is forced to take out loans instead, he or she is not going to be able to repay the loans.

Second, we are not accurately counting the number of students who have defaulted on their loans.

The Department of Education has five categories of defaults but only three of them indicate true default status. The categories are: (1) the loan was defaulted and unresolved; (2) the loan was defaulted but is now in repayment; (3) the loan was defaulted but paid in full; (4)

the loan was defaulted and written off or compromised; and, (5) the loan was permanently assigned to the department for collection.

Should we really be counting loans in categories two and three as defaults? No! Students who are either making payments on their loans or have already paid their loans in full, are obviously not in default.

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The Higher Education Act of 1965 clearly requires the General Accounting Office to conduct an audit every year. GAO has tried to conduct the audits on numerous occasions but the Department of Education keeps such deplorable records that GAO has never been able to complete even one of these audits.

The department has been operating on assumptions and estimates for the past 25 years. And, while we have no idea how accurate their estimates are, GAO has told my staff that because of the recordkeeping problems they have encountered, the estimates cannot be very accurate at all.

I, for one, really don't like having to make policy decisions that directly affect our students' educational choices, the quality of this nation's workforce, and the economic competitiveness of this nation based on estimates that are described by experts as not very accurate at all.

These are just three issues that should be given serious consideration before making career training schools a scapegoat for every real or perceived problem in the student loan programs.

Yes, some career schools misuse Federal dollars by doing a lousy job of preparing their graduates for future employment. And, yes, something should be done about these schools, but not at the expense of those schools who have been turning out top-notch graduates for years and who continue to do so.

There are an extraordinary number of high-quality career schools out there. I know this for a fact because I have personally visited many of them.

The graduates from these schools go on to make outstanding accomplishments in their chosen careers and exemplary contributions to their communities.

Hopefully, the witnesses before us today are discerning enough to realize that all career training schools cannot be painted with the same brush that has been tainted by the bad schools.

Chairman FORD. Thank you. Mr. Goodling. Before I recognize you, the staff has just handed me two clips from yesterday, one entitled, "Curbing student loan defaults from The Washington Post," and one from Congressional Quarterly, "Nunn Blasts Loan System in Long Awaited Critique."

Both of them contain statements that I can not criticize as being inaccurate, but they are misleading. In CQ, it says, "In the House, however, Education and Labor Chairman William D. Ford is a strong defender of the trade schools and attended one himself."

There's the misconception. I went to Henry Ford Trade School, which was a euphemistic way to describe a plan by which, at age 14, I was paid 20 cents an hour to work in the Ford Motor Company while they taught me how to use tools.

That was not a trade school that trained people to work for General Motors or Chrysler or anybody else. It was intended to train me, if I had been smart enough to stay there instead of going back to high school, to become a tool and dye maker for Ford Motor Company.

If you went through—and this was in 1940 as we were coming to the end of the Depression and into World War II, every single graduate or person who successfully completed 4 years in that school, and it was a 4 year program, went to work immediate for Ford Motor Company and didn't start with the automobile assemblers; you started with the junior officer corps.

Preference for that school, incidentally, was given to the children of Ford workers who died. And one of the strange accidents about it is that they used to kill a lot of black people in the foundry.

And so the first place that I ever went to school with another student who had black skin was at the Henry Ford Trade School. And that was Henry Ford's idea of the way to reward a family whose breadwinner had lost their life in his plant.

The point is that it was not a business being run with some expectation like the University of Michigan or Harvard or Stanford or any of the other outstanding names you know of that provide an educational opportunity of which you take and go where you will with it and see what you can do with it.

This was a very specific experience. Now, I want to say that by way of indicating that I did not attend what these people are generically calling a trade school. I attended what these people I think would identify as an industrial employer's training program. It was a very sophisticated one.

And, as a matter of fact, one of the reasons that I've been so quick to identify with that experience in my life in my Congressional district is that a large number of the independent machine shops, parts manufacturers in my district, are small companies with anywhere from 50 to 500 employees, which are run by people who learned the trade, if you will, of being a machinist at the Ford Trade School. And, indeed, some of them ended up as top people in engineering and design for General Motors and Chrysler.

But it was not Ford's design to train anybody for anybody else. We were being taught to do things the Ford way.

For those of you who are mechanically inclined, you might be interested in the fact that during the war when I took a pre-engineering course, I had to relearn my math because Henry Ford did not use SAE standards. Anybody in the room old enough to remember Ford cars before World War II can tell you that you could not use a Chevrolet spark plug in a Ford car. The threads on the spark plug were different.

Henry Ford took an inch and a foot and a yard and divided it into hundredths and tenths, not the way the British and we do it. It was not the metric system because the metric system uses a meter as the basic measurement. He took a yard and set up his own mathematical system and made his nuts and bolts accordingly.

So if you owned a Ford car, you couldn't use a standard set of wrenches to work on it; you had to have a Ford monkey wrench. And somebody heard me telling this story and gave me one recently. It looked like the letter "F" as a matter of fact.

I say all of this by way of clearing up a confusion that I seem to have caused by making reference to having gone to a trade school. That was its name, a trade school. Amongst the people I grew up with, it was a very respected thing for a young man to do. And as a white, young, suburban male, my family was extremely proud when I was accepted at Henry Ford Trade School. And I've never been ashamed that I attended it.

I don't, however, feel that it is fair to try to characterize my protection of the population that does have to fall back on the trade schools after they fall through the cracks in our public school system as being identified with me only because I went to a trade school. They're identified with me because I have a concern that the Federal Government never decided that the education needed to be a brain surgeon is far more honorable than the education needed to study pre-Columbian art or to be an auto mechanic.

That's really what's at the bottom of my concern, and I hope that the writers of these articles will, in the future, remember that I'm being much more socialistic or plebian, maybe, or populist, than you're giving me credit for. It isn't a prejudice stemming from a delightful experience making 20 cents an hour repairing parts for Henry Ford; it's the idea that there are other ways than the way I ended up going to law school to make a decent, respectable living. And that many people have no choice but to go in those directions, and they have no options to get those except going to the military or going to schools that, for a fee, will try to teach them a specific level of skills.

And as the gentleman from Pennsylvania said, there are some of these schools, and there always have been and always will be, who do not fulfill the promise to the students. But I don't want to try ticking off the number of colleges and universities who might fall into that same category.

The number of times we hear of a Ph.D. with outstanding student loans who says the reason I'm not paying back the student loan is after I got my Ph.D. I could never find a job; therefore, the school that gave me the Ph.D. cheated me. That's one of the things we used to hear about, Joe, before they got on propriety schools, the Ph.D. who didn't pay back his student loan. And that goes back to the beginning of the Reagan administration.

So you can find failures in the educational system wherever you look, just as you can find successes. And I hope that we can stay away from class warfare in the consideration of reauthorization.

Mr. Goodling.

Mr. GOODLING. Thank you, Mr. Chairman. I will read only a paragraph out of my statement and ask that the rest be included in the record.

Chairman FORD. Without objection, it will be included, as well as Mr. Coleman's.

Mr. GOODLING. And I would apologize to my three colleagues. I've been trying to find out for 3 years what people mean when they say choice in education. So I have to go upstairs to find that out. We have a hearing up there and they're going to tell me what is meant when they say choice. And they're going to answer 150 questions that I have about what they mean.

In my prepared statement, I just wanted to read one paragraph. My only hope is that in our zealousness to combat the default rate, we do not throw the baby out with the bath water. Given our work force needs in the coming years, we need a strong postsecondary system. Schools and students should remain eligible for student aid regardless of the type of postsecondary training, so long as the program offers good educational services. We should be less concerned about the type of institution, whether that institution is public or private, academic or trade, nonprofit or propriety, and more concerned with insuring program quality and continuing student access into those quality programs.

I realize there are those who point to the high default rates in the trade and technical schools, but in my home district, these schools have extremely low default rates; in fact, lower than many colleges and universities in Pennsylvania, and they offer a high quality program that serves the needs of the area that I represent.

Thank you, Mr. Chairman.

[The prepared statement of Hon. William F. Goodling follows:]

The Honorable William F. Goodling
of Pennsylvania
Subcommittee on Postsecondary Education
Hearing on the Reauthorization
of the Higher Education Act
May 21, 1991

Mr. Chairman, I wish to thank you for holding a hearing today on the Reauthorization of the Higher Education Act, which will focus on program integrity. The integrity of the loan programs have come under serious question. Defaults have risen to an unacceptably high level; over $2 billion annually is currently going to pay for the defaults in the loan program. As a result, we have already begun to place a number of requirements on schools, students, and lenders.

My only hope is that in our zealousness to combat the default rate, we do not "throw the baby out with the bath water." Given our workforce needs in the coming years, we need a strong postsecondary system. Schools and students should remain eligible for student aid regardless of the type of postsecondary training so long as the program offers good educational services. We should be less concerned about the type of institution, whether that institution is public or private, academic or trade, or nonprofit or proprietary and more concerned with ensuring program quality and continuing student access into those quality programs. I realize their are those who point to the high default rates in the trade and technical schools, but in my home district these schools have extremely low default rates and offer high quality programs that serve the needs of south central Pennsylvania.

I am hopeful that we can find ways to ensure quality throughout postsecondary programs. I believe this can be achieved with incentives to reward those programs that offer good educational services to students. I believe we can enhance the structure of the higher education act to include goals for programs, measure and standards, and accountability through licensing, accreditations and oversight.

Again, I wish to thank Chairman Ford for holding this hearing and I wish to thank the witnesses in advance for their testimony. I am certain that your recommendations will guide us wisely for decisions we will be required to make for the reauthorization.

Chairman **Ford**. Mr. Sawyer.

Mr. **Sawyer**. Thank you, Mr. Chairman. I just want to associate myself with the comments of many of those who have spoken before me. It's clear that unless we find a good, solid way to staunch the flow of Federal funds that are being lost to defaults, these programs are going to lose public support, and with it the confidence that's necessary to keep sound programs going.

I've read about the reports from the Senate Government Affairs Committee that places the blame squarely on proprietary schools. I wish the problem were that simple and that easy. I think it's a good deal more complex than that.

It's important to understand that proprietary schools fill an important place in the postsecondary spectrum, and we've just simply got to find a way to continue to offer student financial aid to meet the full range of postsecondary choices if this Nation is going to continue to be as strong as we have every right to expect that we can be.

And I thank you for your indulgence, Mr Chairman.

Chairman **Ford**. Mr. Roemer.

Mr. **Roemer**. Thank you, Mr. Chairman. I will be very brief. I just wanted to welcome my three colleagues, and I look forward to their expert testimony and their insight. From reading through some of their testimony last night and this morning, I especially look forward to, as my colleague from Tennessee points out, hearing about some basic fundamental problems, one being that the government does not even know nor care to know about the student that is applying for Federal aid.

As a big proponent of, and one who worked with the chairman on the floor to get an increase in education funding, it is going to be very difficult for me to justify to my constituents at home increases in funding for education if we can not keep track of the funding that we already have for the programs existing in the Federal Government.

So on those two points, I look forward to the testimony and the vision of my colleagues and also hope that they will look not just toward the problems that we have here today, but also toward what trade schools may look like in the future, and address the vocational, technical and professional skills that we need in the work force. Maybe they can address that both in their statement and in the questions that we'll ask.

Thank you, Mr. Chairman. And I look forward to hearing from all three of you this morning.

Chairman **Ford**. Mrs. Lowey.

Mrs. **Lowey**. Thank you, Mr. Chairman. And I appreciate having the opportunity to hear from my colleagues this morning. I look forward to your testimony.

As I've been travelling around my district, the key problem with so many of our constituents besides health care, besides housing, is how we're going to send our children to college. They are feeling squeezed; they're feeling as if they're caught in a vise. And they just don't know how they're going to survive, nevertheless, how they're going to send their kids to college. At the same time, we find that billions of dollars are being lost in waste and fraud, and that is limiting our ability to respond to the needs of America's families.

So I really look forward to your testimony, and I hope that you can shed some important light on this critical issue of integrity in the student aid programs. Thank you for appearing before us today.

Chairman **Ford**. Mr. Andrews.

Mr. **Andrews**. Thank you, Mr. Chairman. I appreciate this continuing development of the issues before us. I look forward to the testimony of our three colleagues today.

In reviewing your written testimony, I really think you're serving almost a microscope function for us. We started the process knowing that there is a default problem. When you turn the microscope more intensively, you see that it focuses to a great extent on proprietary schools, but you're taking us the next step, which is to get us beyond that generalization and give us the tools to begin to distinguish between proprietary schools which are serving a viable and legitimate function and those who are abusing the system.

So I anxiously look forward to your remarks, and thank you for your time this morning. Thank you, Mr. Chairman.

Chairman **Ford**. Mr. Reed.

Mr. **Reed**. Thank you, Mr. Chairman. I, too, want to welcome my colleagues here. They have firsthand experience with some of the abuses in the Graduate Student Loan Program that we see resulting in ill service to our students and ill service to the taxpayers.

I think, though, as we look at this issue and as we focus on the testimony, we have to understand that trade and technical schools do provide a route to opportunity and to advancement for many Americans. And so our task is to winnow out those programs and those institutions which don't serve the public, and reinforce those programs which do.

I'm pleased to be participating in this process. Thank you, Mr. Chairman.

Chairman **Ford**. My understanding is that Marge Roukema had to go to the Committee on Banking, so without objection, her statement will be placed in the record. And we'll be hearing a good deal from her as we go on with this process.

[The prepared statement of Hon. Marge Roukema follows:]

CONGRESSWOMAN MARGE ROUKEMA
TESTIMONY
SUBCOMMITTEE ON POSTSECONDARY EDUCATION
REAUTHORIZATION HEARING ON HIGHER EDUCATION ACT
TUESDAY, MAY 21, 1991

Thank you Mr. Chairman for the opportunity to testify before my own Subcommittee, on an issue I have had an intense and sustained interest in for many years -- waste, fraud and abuse in the Student Financial Aid Program.

Stop me if you have heard this one before.

A federal insurance program that protects thousands of American citizens begins to lose money. After years of drain, the telltale signs of insolvency appear. Congress is warned. A solution is proposed. The special interests step forward to say the problem is being exaggerated and that half-step reforms are sufficient. Congress debates and delays action until, finally, the program goes bankrupt. With billions of taxpayer dollars at stake, the government steps in with a costly bailout.

This is not the well-worn saga of the savings and loan debacle. I'm talking about the default scandal in the Federal Guaranteed Student Loan program where the cumulative total of defaults has reached nearly $13 Billion dollars!

The Federal Student Loan Program and the S&L industry are by no means the same. But, unless we act wisely today, the parallels between the two may be more than rhetorical. As Yogi Berra once said, "Its deja vu all over again!"

Each time we are faced with a program in crisis, Congress tries to avoid politically difficult decisions. The result is that relatively minor problems are permitted to fester until they require huge bailouts.

As my colleagues on the Education Committee know, I have pressed since 1987 to reform the student loan program through a legislative mandate. The growth in defualts is clear evidence that the system is lacking the necessary safeguards against fraud, waste and abuse.

Why do so many students default on their loans? To a large extent, the increase in student loan defaults is directly attributable to the explosion in the number of trade and technical schools over the past 10 years. Many of these schools are simply scam operations that go into business for the sole purpose of bilking the government out of student aid money. Some of these scam schools are operating with annual defualt rates as high as 70 percent!

Please do not misunderstand, I do not mean to imply that all trade school operators are malicious. In fact, many of these schools provide an important link in our education pipeline. Just last month, I had the pleasure of visiting a fine trade school in my district to observe fist hand both the fine educational program and job placement record.

However, there are bad apples. These schools enroll students, secure guaranteed loans from banks and provide such a poor education that many students either drop out or are unable to find employment in the field for which they were supposedly trained. The school keeps the student aid money, the bank gets its government-backed loan payment, and the student is left holding the bag with a poor credit rating, no job, and no income to repay the student loan.

What we need is legislation that goes to the heart of the problem and takes immediate action to stop the hemorrhaging in a program that is essential to the higher education of many students. Mr. Chairman, as you know, I have introduced the Student Loan Reform Act, H.R. 1118, to make these much needed changes.

My bill requires lenders to examine the legitimacy of the schools to which they lend, and share the risk for loans gone bad. It requires that the federal guarantee insurance will be reduced from 100% to 95% when for any consecutive two year period a school has a default rate of more than 30%. It prohibits the flagrant recruiting abuses and accreditation fraud perpetrated by the scam schools.

My bill calls for tougher accreditation standards to prevent an owner of a trade school from serving on the very accrediting board which certifies his school. My reforms call for student loan guaranty agencies to be allowed to get information from State licensing boards to help locate defaulting borrowers who have pursued careers in professions requiring State licensure.

My bill requires an independent audit of graduation and placement statistics and tuition refunds when a school misrepresents its educational program. In addition, my bill prohibits the use of commissioned recruiters who are paid by the number of people they bring into the school.

Finally, my student loan reforms require students to provide more information to make them easier to locate when they default.

I did my best to have my student loan default reforms added to the House bill H.R. 5115, the Equity and Excellence in Education Act, during the last Congress. My amendment, however, was defeated.

Nevertheless, my efforts were validated -- or vindicated -- when three of the very same reforms included in my Student Loan Reform bill were adopted in the Fiscal Year 1991 Budget. The "Ability-to-Benefit" provision which requires that any student on the basis of "Ability-to-Benefit" must, prior to enrollment pass an independently administered examination; High Default Rate Cut-Off which calls for schools with default rates of 35% for Fiscal Year 1991-1992 and 30% for the following years to lose their eligibility to receive federal aid; and Delayed Disbursement which creates a 30 day delayed disbursement for all loans to first time borrowers.

Let there be no mistake about my intentions. My aim is not to eliminate the trade school industry. However, we can and must dredge from the system the scam schools that are ripping off the taxpayer and harming deserving students.

No one wants to cut access to higher education to any group. Some have put forth the argument that most of the high default rate trade schools serve minority students and if you cut loans to these schools, you will deprive minorities of career training. Nothing can be further from the truth.

The hard fact is that these schools are doing far greater harm to minority students by remaining in business. What happens all too often is that a scam school will recruit an inner city student for courses and sign them up for a federally guaranteed student loan. The student enrolls and drops out because the school lacks the ability to train students in marketable and needed skills, leaving the student unable to find a job, saddled with debt which they cannot pay back and with a ruined credit record. Any one in their right mind cannot say that this benefits minorities.

In addition to financial losses to the taxpayers, the losses extend to thousands of worthy students who will be deprived of the opportunity for higher education because money was wasted on defaults. In the end, our nation's ability to compete in world markets will suffer if we wait any longer to fix the program.

I look forward to working with my colleagues on the Education Committee to eliminate fraud, waste and abuse and return financial integrity to the student loan program. Thank you again, Mr. Chairman.

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102D CONGRESS
1ST SESSION

H. R. 1118

To amend the Higher Education Act of 1965 to reduce student loan defaults, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 1991

Mrs. ROUKEMA introduced the following bill; which was referred to the Committee on Education and Labor

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A BILL

To amend the Higher Education Act of 1965 to reduce student loan defaults, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This title may be cited as the "Student Loan Default Prevention Act of 1991".

(b) REFERENCES.—References in this title to "the Act" are references to the Higher Education Act of 1965.

SEC. 2. RISK SHARING BY LENDERS TO STUDENTS AT HIGH DEFAULT RATE INSTITUTIONS.

Section 428(b)(1)(G) of the Act (20 U.S.C. 1078(b)(1)(G)) is amended to read as follows:

"(G) insures not less than 100 percent of the unpaid principal of loans insured under the program, except that if one-third or more of the principal amount outstanding during any consecutive 2-year period on loans of an eligible lender consists of loans to students for the cost of attendance at a high default rate institution, the program insures 95 percent of the unpaid principal of the loans of such lender that are insured under the program;".

SEC. 3. GUARANTY AGENCY PROHIBITION ON THE SALE OF CERTAIN STAFFORD STUDENT LOAN LISTS.

Section 428(b)(3) of the Act (20 U.S.C. 1078(b)(3)) is amended—

(1) by striking out "or" at the end of subparagraph (B);

(2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon and "or"; and

(3) by adding at the end thereof the following:

"(D) sell lists of student borrowers who have loans made, insured, or guaranteed under this part.".

SEC. 4. GUARANTY AGENCY USE OF STATE LICENSING BOARD INFORMATION.

Section 428(b) of the Act (20 U.S.C. 1078(b)) is amended by adding at the end thereof the following new paragraph:

"(7) STATE GUARANTY AGENCY INFORMATION REQUEST OF STATE LICENSING BOARDS.—Each guaranty agency is authorized to enter into agreements with each appropriate State licensing board under which the State licensing board, upon request, will furnish the guaranty agency with the address of a student borrower in any case in which the location of the student borrower is unknown or unavailable to the guaranty agency.".

SEC. 5. SPECIAL LIMITATION ON THE DEFERMENT OF PAYMENT OF PRINCIPAL AND INTEREST ON PLUS LOANS.

Section 428B(c)(1) of the Act (20 U.S.C. 1078-2(c)(1)) is amended—

(1) by striking out "(A)"; and

(2) by striking out "; and (B) during any period during which the borrower has a dependent student for whom a loan obligation was incurred under the section

and who meets the conditions required for a deferral under clause (i) of either such section".

SEC. 6. CREDIT BUREAUS.

(a) NOTICE OF DELINQUENCY.—Section 430A(a) of the Act (20 U.S.C. 1080a(a)) is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following:

"(3) with respect to any payment on a loan that has been delinquent for 90 days, information concerning the date the delinquency began and the repayment status of the loan; and".

(b) NOTICE TO BORROWER.—Section 430A(c) of the Act (20 U.S.C. 1080a(c)) is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and"; and

(3) by adding at the end the following:

"(5) with respect to notices of delinquency under subsection (a)(3), the borrower is informed that credit bureau organizations will be notified of any payment that is delinquent for 90 days or more.".

(c) LIMITATION ON REPORTING.—Section 463(c)(3)(B) of the Act (20 U.S.C. 1087cc(c)(3)(B)) is amended by striking

", if that account has not been previously reported by any other holder of the notes".

SEC. 7. REVISED DISCLOSURE REQUIREMENTS OF SLS LOANS.

Section 433(a) of the Act (20 U.S.C. 1083(a)) is amended—

(1) in subsection (a) by inserting "and except as specified in subsection (e) of this section" after "section 428C"; and

(2) by inserting the following new subsection after subsection (d):

"(e) SPECIAL RULES FOR SUPPLEMENTAL LOANS FOR STUDENTS.—Loans made under section 428A shall not be subject to the disclosure of projected monthly payment amounts required under subsection (a)(8) of this section, provided that the lender provides the borrower with sample projections of monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the borrower is in school.".

SEC. 8. REQUIRED INDEPENDENCE OF ACCREDITING AGENCIES FOR VOCATIONAL SCHOOLS.

Section 435(c) of the Act (20 U.S.C. 1085(c)) is amended by adding at the end thereof the following new sentence: "The Secretary shall not include on such list any accrediting agency or association any of whose officers or directors is affiliated, in any way, with a school seeking or obtaining eligibility under this subsection.".

SEC. 9. NOTICE ON DELINQUENT LOANS REQUIRED.

(a) Pre-Claims Assistance.—Section 435(d) of the Act (20 U.S.C. 1085(d)) is amended—

(1) in paragraph (1) by striking "through (5)" both places it appears and inserting "through (6)"; and

(2) by adding at the end thereof the following new paragraph:

"(6) Request for pre-claims assistance.—To be an eligible lender under this part, each eligible lender shall, if the agency that guaranteed the loan offers pre-claims assistance for default prevention, request pre-claims assistance within the first 10 days such assistance is available as specified by the guarantee agency.".

(b) Notice.—Section 428(k) of the Act (20 U.S.C. 1078(k)) is amended by—

(1) redesignating paragraph (2) as paragraph (3); and

(2) inserting the following new paragraph after paragraph (1):

"(2) Provision of notice of request for pre-claims assistance to eligible institutions.—Each guaranty agency shall, within 30 days of receipt of the request for pre-claims assistance, notify each eligible institution, with respect to students who are delinquent on the repayment of any loan received for attendance at such institution, of the lender's request for pre-claims assistance for default prevention on such loan. Such information may be provided to the eligible institution by submission of a copy of the lender's pre-claims request or through other means.".

SEC. 10. REDUCTION IN SPECIAL ALLOWANCE.

(a) AMENDMENTS.—Section 438(b)(2) of the Act (20 U.S.C. 1087-1(b)(2)) is amended—

(1) in subparagraph (A)(iii), by striking "3.25 percent" and inserting "3.0 percent";

(2) in subparagraphs (B)(i) and (D)(i), by striking "substituting '3.5 percent' for '3.25 percent' " and inserting "substituting '3.25 percent' for '3.0 percent' ";

(3) in subparagraph (B)(ii)—

(A) by striking "2.5 percent" and inserting "2.25 percent";

(B) by striking "1.5 percent" and inserting "1.25 percent"; and

(C) by striking "0.5 percent" and inserting "0.25 percent".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) of this section shall apply with respect to loans made on or after the date of enactment of this Act.

SEC. 11. ELIGIBLE INSTITUTION ACCREDITATION RULE.

Section 481(a) of the Act (20 U.S.C. 1088(a)) is amended by adding at the end thereof the following new paragraph:

"(5) Whenever the Secretary determines accreditation for the purpose of paragraph (1), the Secretary shall not approve the accreditation of any eligible institution of higher education if the eligible institution of higher education is in the process of receiving new institutional accreditation by a national or regional accreditation agency unless the eligible institution submits to the Secretary all materials relating to the prior accreditation, including the reasons, if applicable, for changing the accrediting agency or association.".

SEC. 12. ADDITIONAL BORROWER INFORMATION REQUIRED.

Section 484(b) of the Act (20 U.S.C. 1091(b)) is amended by adding at the end thereof the following new paragraph:

"(5) In order to be eligible to receive any loan under this title, a student shall provide to the lender at the time of applying for the loan the driver's license number of the student borrower, if applicable, and the name and address of the next of kin of the student borrower.".

SEC. 13. EXIT INTERVIEW INFORMATION.

Section 485(b) of the Act (20 U.S.C. 1092(b)(1)) is amended by inserting before the last sentence thereof the following new sentence: "Each eligible institution shall require that the borrower, at the completion of the course of study for which the borrower enrolled at the institution or at the time of departure from such institution, submit to the institution, the address of the borrower, the address of the next of kin of the borrower, and the driver's license number, if applicable, of the borrower during the interview required by this subsection.".

SEC. 14. TOLL-FREE CONSUMER HOTLINE.

Section 485 of the Act (20 U.S.C. 1092) is amended by adding at the end thereof the following new paragraph:

"(e) TOLL-FREE CONSUMER HOTLINE.—(1) In addition to the toll-free telephone information provided for in section 483, the Secretary shall contract for, or establish, and publicize a toll-free telephone number for use by the public, in order to permit students who allege fraud or unfair practices by eligible institutions to inform the Department of such fraud or unfair practices.

"(2) The Secretary shall, directly or by way of contract or other arrangement, make the toll-free telephone number, and the availability of the consumer hotline established by this subsection, generally available to students receiving financial assistance under this title.".

SEC. 15. AUDIT OF GRADUATION AND PLACEMENT STATISTICS.

Section 487(a)(8) of the Act (20 U.S.C. 1094(a)(8)) is amended by inserting after "most recent available data" the following: ", certified on the basis of an audit performed by an independent public agency,".

SEC. 16. RESTRICTIONS ON INSTITUTIONAL PROMOTIONAL ACTIVITIES.

Section 487(a) of the Act (20 U.S.C. 1094(a)) is further amended by adding at the end thereof the following:

"(12) The institution does not—

"(A) use any contractor or any person other than salaried employees of the institution or a volunteer to conduct any activities related to recruiting and admission of students, including canvassing, surveying, promotion, or similar activities; or

"(B) pay any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments to any person engaged in any such activity.".

SEC. 17. ACADEMIC YEAR DEFINITION.

Section 487(a) of the Act (20 U.S.C. 1094(a)) is further amended by adding at the end thereof the following new paragraph:

"(13) The institution will use the same definition of 'academic year' for all programs authorized by this title.".

SEC. 18. TUITION REFUNDS.

(a) REFUND RULE.—Section 487(c)(2)(B)(i) of the Act (20 U.S.C. 1094(c)(2)(B)(i)) is amended by adding at the end thereof the following new sentence: "In addition, the Secretary may require such eligible institutions to make refunds in accordance with division (iii).".

(b) REFUND PROCEDURES.—Section 487(c)(2)(B) of the Act is amended by adding the following new division after division (ii):

"(iii) When the Secretary determines there has been a violation, failure, or misrepresentation pursuant to division (i), the Secretary may require the institution to refund the student's tuition and fees. The Secretary shall establish procedures for refunding the tuition and fees. Such procedures shall—

"(I) first require the payment by the institution to the United States Government of any portion of the tuition and fees paid with Federal funds received under this title (other than funds under subpart 3 of part A and part B of this title); and

"(II) then require payment by the institution to the lender of that portion of the tuition and fees attributable to a loan made, issued, or guaranteed under part B of this title.".

SEC. 19. SPECIAL ACCREDITATION RULES.

Section 487(c) of the Act (20 U.S.C. 1094(c)) is amended—

(1) by redesignating paragraph (3) as paragraph (5); and

(2) by adding after paragraph (2) the following new paragraphs:

"(3) The Secretary is authorized to carry out the provisions of paragraph (1)(D), relating to limitation, suspension, or termination of an eligible institution whenever the institution withdraws from a nationally recognized accrediting agency or association during a show cause or suspension proceeding brought against that institution.

"(4)(A) Whenever a nationally recognized accrediting agency or association reports pursuant to subparagraph (B) that an eligible institution was denied institutional accreditation, the Secretary is authorized to carry out the provisions of paragraph (1)(D) relating to limitation, suspension, or termination of an eligible institution.

"(B) The Secretary is authorized to enter into such arrangements with accrediting agencies and associations as may be necessary to assure notice of the denial of institutional accreditation in order to carry out subparagraph (A).".

SEC. 20. REGULATIONS FOR INSTITUTIONAL DISCLOSURE OF BORROWER RECORDS.

The Secretary shall promulgate regulations specifying the legal restrictions and the requirements of eligible institutions relating to loan counseling and reporting requirements including but not limited to disclosure of borrower records to third parties, the Fair Debt Collection Practices Act, and any other applicable Federal law.

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Chairman **Ford**. And we'll start with Mr. Gordon. Without objection, the prepared statements you have with you will be inserted in the record immediately following your comments. You may add to them or summarize in any way that you think will be most helpful to the record.

STATEMENT OF HON. BART GORDON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. **Gordon**. Thank you, Mr. Chairman and members of the committee. I appreciate the chance to be with you today. And I want to compliment you on your really aggressive set of hearings on this very important issue. I looked over the list of hearings and topics and I was very impressed at what you're doing.

And let me say that I'm one that has consistently and enthusiastically been supporting increases in student financial aid. And, quite frankly, in my gut, in the past, when I would hear people criticize a lot of the programs, I felt that they were just looking for an excuse to undermine them.

But after being directly involved and looking at this over the last year, I have changed some of my views. I haven't changed my views as to whether or not financial aid for postsecondary education, and for trade schools, is important or not; I still think it's very important.

But I have changed my mind as to the value to the taxpayers and to the students. My investigation began with my own concern that for-profit trade schools that have bankrupted the Higher Education Assistance Fund could do the same thing to the Tennessee Student Assistant Corporation, my State's only other guarantee agency.

State guarantee agency failures, due to high default schools in almost every State, threaten students hoping to attend college or any other type of postsecondary institution. As my investigation continued, I found problems in our student aid programs to be broader and deeper than I'd ever imagined.

Now, I only have a brief time today, so I'm going to make three very quick points. Number one, we don't know enough about what's going on in our student aid programs. For example, we spend more than $5 billion per year on the Pell grant program, but no member of Congress can tell his or her constituents whether a single Pell grant student is completing course work, finishing school, or getting a job.

The Department of Education does not cross reference all student financial aid forms with the IRS to see if the student is actually or accurately reporting their income. The Department of Education does not have the names of all the students who have gotten student loans, much less keep track of students' repayment status. The Department of Education does not check a student's Social Security number with the Social Security Administration to see if that student even exists.

The fact is that the Federal Government, in over 26 years, has committed over $100 billion and, now, over $18 billion annually, to a program that has no comprehensive centralized student record system. We must do better.

Number two, scores of individuals in every part of this country are worse off for ever having participated in the student loan program. The other day, a staff person said this, and I quote, "Despite waste, fraud and high default rates, if even one underprivileged student in four or five or ten is helped at even the worst school, then our tax dollars are well spent." I can assure you that staffer has not been hearing from the three in four or the nine in ten that weren't helped at that bad proprietary school.

I found that even the most irresponsible diploma mill will graduate and place a few at risk students. My father used to say, "Even a blind hog will occasionally get an acorn." But I think you'll find that most often times these students are going to succeed because of their motivation and, oftentimes, despite the quality of instruction they're receiving.

But what about those low income students that end up with little or no worthwhile training, with no job resembling the one they were promised, if any job at all, debt they can't pay, bad credit, no chance for future student aid, and, maybe worse of all, a loss of their own self-esteem?

Those are the students that I've been hearing from almost daily for the past few months, the people who are worse off, much worse off, for ever having signed a student aid form.

And I'd like to read a few lines from one of many letters that I've received. And I quote, "It sounded wonderful. I was then explained that just signing this paper would give me a way to go to school and not owe a thing. A grant, they called it. Well, to make a long story short, the course was a joke. I can not see any way that I can repay this thing back. I'm working at a minimum wage job and barely make it now. I can't pay it; I can't see any way out. Can you help?"

We can help by toughening accrediting standards so that students have a better chance of getting something when they sign the dotted line.

My accreditation bill, H.R. 2246, would require accrediting agencies to take into account default rates and course of study completion rates, and would require agencies that accredit vocational and proprietary schools take into account job placement rates.

Number three, the most simple and easy solution to the default problem—just provide more money in grants—is really no solution at all. With the Omnibus Reconciliation Act of 1990, we decided schools with 40, 50 or 60 percent default rates should not continue to receive student loans, but we did nothing to prevent those same schools from continuing to take unlimited Pell grants.

That doesn't make sense. A school that isn't handling loan dollars responsibly can't be expected to do better with grant money. My bill, H.R. 327, addresses the problem by basically applying the default standards contained in OBRA 1990 for student loans to the Pell grant program.

In closing, I would ask that each of you take a long, hard look at this issue. You will hear reassuring words today that it's just a few bad schools, and that all the problems will soon be solved. Before you accept all the comforting assurances you hear, take a look for yourself at the default rates for schools in your own State. Go to your State vocational school and talk to the director. Let that director tell you about the students that are coming to those schools from proprietary schools that didn't do the job. Read the GAO findings on accrediting agencies and student loan defaults or Senator Nunn's report, released last Friday.

And, most importantly, take time to listen to people who have been spun out of the system by false promises. If you really believe, as I do, that the Federal Government must provide financial assistance to give Americans a wide range of educational opportunities, and if you really believe we need a more technically skilled work force, and if you really are concerned about what is happening to the at risk students out there, then don't turn your back on the problem we face.

Solutions won't be easy or pleasant, but this program is worth it. Thank you.

[The prepared statement of Hon. Bart Gordon follows:]

OPENING STATEMENT OF U.S. REP. BART GORDON

Mr. Chairman, members of the subcommittee, I appreciate the opportunity to be here and have a chance to discuss the issue of federal student financial aid.

Mr. Chairman, I particularly want to thank you and your staff for your help and leadership on this issue.

Mr. Chairman, I think that most of the people involved with the student loan and grant programs share the same goal - giving young Americans a chance for a better life through education and training.

Members of Congress, especially members of the Committee, officials at the Department of Education, students and their families, as well as the vast majority of those involved in post-secondary education share this goal. It's a goal that I brought with me when I came to Congress.

For me, the goal of providing students, especially underprivileged students, with the opportunity to go to school and get good jobs has not changed in the last year, but my view of how our programs are succeeding and failing, both for students and taxpayers, has changed.

I began to investigate our student aid programs closely when the guarantee agency in my home state, the Tennessee Student Assistance Corporation, called me with some serious concerns about high default rate schools. The Tennessee Student Assistance Corporation was worried about a financial failure, a scenario that could have led to thousands of future Tennessee students being denied aid.

After close to a year of looking carefully at this issue, I could go on for hours, but in my brief time here I want to make 3 points of concern:

Number 1: We don't know enough about what's going on in our student aid programs.

Right now, the Department doesn't even check a student's Social Security number with the SSA to see if that student exists.

The Department doesn't cross reference all student financial aid forms with the IRS to see if the student is accurately reporting their income.

The federal government can't even give taxpayers:

- An accurate assessment of the status of repayment for most students who took out loans.

- The names of all the students who have gotten student loans.

- We can't tell if our Pell Grant recipients are getting jobs, or even if they are completing their coursework, or even finishing school.

Number 2: Scores of individuals have come to me who are far worse off for ever having become a part of any of these programs. There are those who believe that if our student loan and Pell Grant programs help 1 in 10, or even 1 in 20 people they are worth it. Many people in Congress carry that understandable view.

Here are some examples:

"Dear Congressman Gordon,

> My name is William L. Merritt and five years ago, when I was 18 years old, I made a very stupid mistake. I enrolled in USA Training, a truck driving school. They sent a representative to my house, and to make a long story short, I got sucked in."

William goes on to state:

> "To sum it all up my credit is ruined, I'm laid-off from my job."

OR:

"Dear Congressman Gordon: ...

"It sounded wonderful. I was then explained that just signing this paper would give me a way to go to the school and not owe a thing - a grant they called it. Well to make a long story short, ... The course was a joke. They were not even certified in Tennessee to be teaching that course. And now there is a $7,000.00 'grant' that will be paid off (if payments are made) when I am 50 years old. ... I cannot see anyway that I can repay this thing back. I am working at a minimum wage job and barely make it now. ... I can't pay it and I can't see anyway out. ... Can you help?"

Number 3: The most simple and easy solution - just give larger and more Pell Grants - is really no solution at all.

I support the idea of increasing aid to students, but I don't support pouring more money into the coffers of irresponsible schools.

Let me conclude by saying, I believe in giving to underprivileged students. But I've been out there in many of those schools, and many of the places I visited, don't even give high risk students a remote chance of getting a solid education, they simply churn out another diploma and turn the student out on the street with a large debt, and no job skills.

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102D CONGRESS
1ST SESSION

H. R. 327

To amend the Higher Education Act of 1965 to delay the disbursement of Pell Grants to first-year students, to make ineligible for participation in the Pell Grant program any institution with a high default rate on student loans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1991

Mr. GORDON introduced the following bill; which was referred to the Committee on Education and Labor

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A BILL

To amend the Higher Education Act of 1965 to delay the disbursement of Pell Grants to first-year students, to make ineligible for participation in the Pell Grant program any institution with a high default rate on student loans, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Educational Grant Reform Act of 1991".

SEC. 2. AMENDMENTS TO THE HIGHER EDUCATION ACT OF 1965.

(a) INITIAL DISBURSEMENT REQUIREMENTS.—Section 411(e) of the Higher Education Act of 1965 (20 U.S.C. 1070a(e)) is amended by adding at the end the following: "The first payment made under this section to a student who is entering the first year of a program of undergraduate education, and who has not previously obtained a grant under this part, shall not (regardless of the amount of such grant or the duration of the period of enrollment) be presented by the institution to the student for endorsement until 30 days after the student begins a course of study, but may be delivered to the eligible institution prior to the end of that 30-day period."

(b) INELIGIBILITY BASED ON HIGH DEFAULT RATES.—Section 312(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)) is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by redesignating subparagraph (F) as subparagraph (G); and

(3) by inserting after subparagraph (E) the following:

"(F) which is not ineligible to participate in a program under part C as a result of high default rates as described in section 435(a)(3) (20 U.S.C. 1088(a)); and".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to any awards made for any academic year beginning after the expiration of the 30-day period beginning on the date of the enactment of this Act.

SEC. 3. STUDY OF ACCREDITATION OF PROPRIETARY SCHOOLS.

(a) IN GENERAL.—The Secretary of Education shall conduct a study on the accreditation of proprietary institutions of higher education (as defined in section 435 of the Higher Education Act of 1965). Such study shall—

(1) examine conflicts of interest with respect to members of the boards of proprietary institutions of higher education; and

(2) determine if the current system of accreditation adequately represents the interests of the public by accrediting institutions that educate students adequately and use public funds responsibly.

(b) REPORT TO CONGRESS.—The Secretary of Education shall transmit a report to the Congress on the study required by subsection (a) before the expiration of the 180-day period beginning on the date of the enactment of this Act.

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102D CONGRESS
1ST SESSION

H. R. 2246

To amend the Higher Education Act of 1965 to strengthen the oversight by the Secretary of Education of the functioning of college accrediting agencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1991

Mr. GORDON introduced the following bill; which was referred to the Committee on Education and Labor

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A BILL

To amend the Higher Education Act of 1965 to strengthen the oversight by the Secretary of Education of the functioning of college accrediting agencies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Accreditation Oversight Act of 1991".

(b) REFERENCES.—References in this Act to "the Act" are references to the Higher Education Act of 1965.

SEC. 2. FINDINGS.

The Congress finds that—

(1) The various agencies that accredit institutions of higher education have an important responsibility to assure that minimum educational standards are met and that the institutions are providing their students with a valuable education.

(2) One important measure of educational value ought to be the success students at a particular institution enjoy in finding suitable employment after attending the institution. Repayment of federally guaranteed student loans is one indicator of the success former students have in finding suitable employment.

(3) Accrediting schools that do not provide educational value perpetuates the national problems of students receiving a poor education and taxpayers getting stuck with billions of dollars a year in student loan defaults.

(4) Therefore, Congress should enact legislation that improves Department of Education supervision of accrediting agencies in order to assure that the agencies only accredit schools that provide educational value for their students and make proper use of Federal financial aid funds.

SEC. 3. ACCREDITATION OVERSIGHT REQUIREMENTS.

(a) AMENDMENT.—Title XII of the Higher Education Act of 1965 is amended by adding at the end thereof the following new section:

"SEC. 1214. ACCREDITATION REVIEW.

"(a) APPLICABILITY OF SECTION.—The requirements of this section shall apply to the identification by the Secretary of nationally recognized accrediting agencies and associations under sections 435, 481, and 1201 of this title.

"(b) ORGANIZATIONAL REQUIREMENT.—The head of the bureau or office of the Department of Education responsible for the performance of identifying and approving nationally recognized accrediting agencies and organizations shall report directly to the Assistant Secretary for Postsecondary Education and shall not report to or be subject to supervision by any officer or employee who is subordinate to such Assistant Secretary.

"(c) ACCREDITING AGENCIES AND ORGANIZATIONS REQUIRED TO REVIEW DEFAULT RATES AND JOB PLACEMENT RATES.—

"(1) DEFAULT RATES.—The Secretary shall not identify or approve an accrediting agency or organization for purposes of section 435, 481, or 1201 of this Act unless such agency or organization has adopted adequate procedures to use high cohort default rates (as that term is defined in section 435(m)) as an indication that the academic program of an institution requires further review in order for the institution to retain its accreditation.

"(2) COURSE OF STUDY COMPLETION RATES.—The Secretary shall not identify or approve an accrediting agency or organization for purposes of section 435, 481, or 1201 of this Act unless such agency or organization has adopted adequate procedures to use low course of study completion rates as an indication that the academic program of an institution requires further review in order for the institution to retain its accreditation.

"(3) JOB PLACEMENT RATES FOR VOCATIONAL AND PROPRIETARY SCHOOLS.—The Secretary shall not identify or approve an accrediting agency or organization for purposes of section 435(c), 481(b), or 481(c) of this Act unless such agency or institution has adopted adequate procedures to use low job placement rates as an indication that the academic program of an institution requires further review in order for the institution to retain its accreditation. The Secretary shall, by regulation, establish procedures by which such job placement rates shall be reported to the Secretary.

"(d) Special Reviews Based Upon Default Rates.—The Secretary shall order a special review of the operations of any accrediting agency or organization if the cohort default rate of more than 35 percent of the institutions accredited by that agency or organization exceeds 25 percent.

"(e) Report on Conflicts of Interest.—The Secretary shall, within one year after the date of enactment of this section, conduct a study of, and submit to the Congress a report on, the extent to which conflicts of interest impair the proper functioning of accrediting agencies and organizations for purposes of programs under this Act. Such report shall contain such recommendations for remedial action as the Secretary considers necessary and appropriate.".

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Chairman **Ford**. Thank you. Ms. Waters.

STATEMENT OF HON. MAXINE WATERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. **Waters**. I would first like to thank you for providing the opportunity for me and my colleagues to be here today testifying on this very important subject. I feel particularly honored as a new member to have the opportunity to have input at such an early stage in my career here.

I have worked for quite some time on this issue in California and offered reform legislation there. And I had not anticipated that I would have the opportunity to enter the subject matter as quickly as I am. And, due to you and your hearings, I'm able to do that.

Mr. Chairman and members of the committee, the district that I represent is located in the south central portion of Los Angeles. That is the district that was so ably represented by Gus Hawkins, who chaired this committee.

Most of my constituents are African American and hispanic. Many of them are desperately looking for a better life. They're trying to achieve that dream by following the American way—educational advancement leading to job opportunities leading to economic betterment.

While Congress and the American people have tried to help them and millions like them throughout the Nation achieve that dream, fast buck artists have been able to exploit the hopes of earnest students and pocket millions of tax dollars through the operation of poorly run, often outright fraudulent vocational school programs.

Abuses by private, for profit vocational schools have become not only a national scandal, but a national tragedy. Many of these schools' antics entice students to enroll based on misleading, if not completely false, representations.

Many of the students find that the training or materials provided are inadequate, if not completely meaningless; that potential jobs at a living wage are not available at all upon graduation; that available jobs, such as in the security guard field, do not require any advance training or experience; or that inadequate training received at schools does not qualify students to obtain or retain employment.

An example of a recent case filed by the California Attorney General's Office illustrates the tale of shame.

Wilshire Computer College was first accredited by AICS, one of the national accrediting bodies recognized by the United States Department of Education in 1985. In just 3 years, Wilshire's annual tuition income jumped from approximately $2 million to over $7 million. Well over 95 percent of the Wilshire students all or part of their courses with student loans and grants. The California Student Aid Commission has not guaranteed over $28 million in student loans to Wilshire students for 4 month to 8 month courses that cost from $5,000 to $7,000.

According to court documents, Wilshire solicits students through recruiters who advertise job openings, not education. The recruiters earn $300 to $400 per head. Wilshire also uses ads that claim, and I quote, "In just 16 weeks you can earn up to $15 an hour."

In fact, few, if any, graduates earn that much. Wilshire offered an English-as-a-second-language course in conjunction with its computer course. Although students were induced to sign up for loans, the ESL class was supposed to be free if the students withdrew before the start of the computer course. Students who only took the ESL course were later surprised when lenders brought collection actions for the so-called free course.

The statements filed with the court show that Wilshire used an improperly administered fourth grade level entrance test to determine is students it enrolled had the ability to benefit from the course.

Declarations of former student's former school employees and employers show the equipment used to teach was inadequate, often broken and out of date. If graduates were lucky enough to get a job, it was usually at a very low salary for a job that required no special training. Nevertheless, before California instituted a pro rata refund requirement, if students realized their mistake in enrolling at this school and dropped out after the first quarter of the course, Wilshire kept all of the tuition.

Like many vocational schools, Wilshire processed its students' loan applications through one or two lenders, chosen by the school. The students had no contact with the lender. The only knowledge students had about their student loan obligations was what Wilshire told me.

One court document shows that a number of students complained to one lender, the Bank of America, about various misrepresentations, including that the ESL course was free, but B of A continued to loan to Wilshire students for many more months. Needless to say, these students who did not receive an adequate education or a job are still faced with paying off thousands of dollars in student loans.

Wilshire is just one sad story in the tragic saga of vocations school abuse. I have been informed that various law enforcement agencies have filed or are investigating cases involving illegal practices of vocational schools affecting more than 100,000 current and recent students in California alone.

In addition, I have personally spoken to literally hundreds of my constituents who have been cheated by vocational schools. I have sponsored regular workshops in the public housing projects and other places in my district to help people prepare resumes, learn how to search for jobs, and present themselves in job interviews.

At these workshops, I have asked how many people have been ripped off by vocational schools. Usually, 60 to 70 percent of the workshop participants raise their hands. I have hundreds of questionnaires completed by my constituents that attest to the unfair recruitment practices, shoddy training, inadequate placement services, and utter failure of those so-called schools to provide any meaningful education leading to jobs.

The shocking and unacceptable experiences of my constituents are hardly unique. Just ask student, especially poor and minority students, in urban areas throughout this country. While these abuses reveal a national tragedy, the Federal Government's role in fueling this system of fraud and abuse is a costly national embarrassment.

Simply stated, the current systems permits vocational schools to exploit students and treat them as mere conduits for the transfer of tax dollars from the Treasury to the pockets of school owners. We are not talking about petty theft.

For example, the recent bankruptcy of Allied Education Corporation, which operated about 30 schools in poor urban areas nationwide, revealed that owners reaped about $900,000 in annual salaries, and the corporation's assets included, for example, a Ferrari Testarosa valued at $175,000, two Jaguars, one Mercedes automobile, a condominium, a 65 foot Hatteras yacht valued at over $1 million. Incidentally, the school paid more money in salaries to recruiters than to teachers.

The owner of Wilshire Computer College, a four-campus operation in Los Angeles, drew $1.7 million in annual salary, approximately 30 percent of the school's income, leaving the school with liabilities that exceeded its assets.

The owners of National Technical College, a two-campus operation in Los Angeles with affiliated schools in Chicago and Detroit, withdrew $800,000 in just one quarter.

Vocational schools received 22 percent of the $12 billion in student loan guarantees in 1989, but these schools were responsible for 44 percent of the total student loan defaults. Nationally, the total bill for proprietary vocational school defaults exceeded $1 billion. In California, proprietary vocational defaults in fiscal year 1989 amounted to $135 million, a 62 percent default rate.

It is no wonder that these astronomical sums are squandered because the system does not provide adequate safeguards to assure that only students with a demonstrable ability to benefit form the education are eligible for funds; that only schools with a demonstrated track record of success in educating and placing students in jobs are eligible to participate in the Federal programs; that all students are given the opportunity to withdraw and receive refunds from the portion of courses not taken; that all students are not forced to pay for misrepresented or inadequate education; that the Department of Education is given adequate oversight of the quality of integrity of schools.

It is absolutely incredible that a vocational school whose educational mission is to train people for jobs may obtain tens of millions of dollars of Federal grants and insured loan funds and yet never be required, never be required, to graduate any students or place any students in jobs.

After an examination of the issues by the Senate Permanent Subcommittee on Investigations, Senator Nunn observed that, and I quote, "What we have found is overwhelming evidence that Federal student loan programs are riddled with fraud, waste, abuse and pervasive patterns of mismanagement."

We have to decide as a Nation whether we are interested in providing job training or enriching the few who know how to milk the system. If the latter is our goal, we should just direct deposit millions into the accounts of people who profess interest in operating a school. We can avoid the inconvenience associated with deceptive recruitment and shoddy education, and thereby, bypass harming students.

On the other hand, if we are truly interested in meaningful vocational training, the time has really come to change this wasteful program.

Now, I can go into discussing proposals for reform; however, I want to deal with two false issues frequently raised by vocational schools in attempting to hold on to the free flow of student loan dollars.

These schools claim that they are the saviors of African American and hispanic students who could not obtain any job training without their help. These schools attempt to intimidate political leaders from curbing their abuses by claiming that any reduction in money or increases in standards will create a system of educational apartheid, subjugating minority students to inferior or nonexistent opportunities and foreclosing employment.

This allegation is just nonsense; it's a lie. The current program only assures that vast profits to the unscrupulous and broken dreams to minority students. Just look at the news reports, the testimony of students, the reports of the Department of Education's Inspector General, and the few action filed by government agencies.

Just look at the Higher Education Act itself and the Department of Education's regulations, which provide few, if any, requirements related to the prevention of misrepresentations, the promotion of educational quality, or any standards of school education accountability or performances.

The unfortunate truth is that, for many proprietary vocational schools, education is not the end product, but an overhead expense. The more the overhead is reduced, the more the owner gets to pocket. Vocational school reform seeks to channel money to education and not to fancy yachts and cars. It's high time we contribute to the education of students instead of to their victimization.

The other lie is that private, for-profit vocational schools should be subjected to the same rules as public community colleges and other similar institutions. Although all segments of education should meet high quality standards, there are distinct differences between proprietary and public schools.

A relative small percentage of students at public community colleges participate in the student loan programs. In California, for example, less than 1.5 percent of community college students have Federal student loans, compared to 70 percent or more of the students at proprietary schools.

Indeed, at the worst private schools, nearly 100 percent of the students are involved in the Federal program. The public schools are not guilty of the fraudulent enrollment practices epidemic in the proprietary sector. Public community colleges in California have an open enrollment policy, and access should be preserved.

The ultimate questions—where is the problem, where is the abuse, where are the major defaults, where are the dollars being lost—all lead to the same answer: private vocational schools.

I want to highlight a few of the proposals which I have made to the committee staff to curb many of the problems. But, Mr. Chairman, instead of doing that, I have submitted some of the proposals, and I would like to answer questions.

I know that my testimony may be shocking to some of you, and particularly to those of you who kind of warned us in advance that you feel very strongly about your support for some of these private postsecondary schools.

I have deep respect for you and your experiences and respect for those schools that offer real education and job opportunities, but I want to tell you, and I will bring to you the documentation. I have been getting students to document it now for almost 3½ to 4 years. I have boxes of affidavits that have been filled out about the fraudulent practices in the 29th Congressional District alone, some of which I have cited to you today.

I welcome the opportunity to be here with you today and welcome any questions you may have about my testimony about any of the proposals that I have offered to you for consideration. Thank you very much.

[The prepared statement of Hon. Maxine Waters follows:]

TESTIMONY OF CONGRESSWOMAN MAXINE WATERS

Mr. Chairman and Members of the Committee:

The district that I represent is located in the south central portion of Los Angeles. Most of my constituents are African-American and Hispanic. Many of them are desperately looking for a better life. They are trying to achieve that dream by following the American way: educational advancement leading to job opportunities leading to economic betterment.

While Congress and the American people have tried to help them and millions like them throughout the nation achieve that dream, fast buck artists have been able to exploit the hopes of earnest students and pocket millions of tax dollars through the operation of poorly run and often outright fraudulent vocational school programs.

Abuses by private, for-profit vocational schools have become not only a national scandal but a national tragedy. Many of these schools entice students to enroll based on misleading, if not completely false, representations. Many of the students find that the training or materials provided are inadequate, if not completely meaningless; that potential jobs at a living wage are not available at all upon graduation; that available jobs, such as in the security guard field, do not require any advance training or experience; or that inadequate training received at schools does not qualify students to obtain or retain employment.

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According to court documents, Wilshire solicits students through recruiters who advertise job openings, not education. The recruiters earn $300 to $400 per head. Wilshire also uses ads that claim, "IN JUST 16 WEEKS YOU CAN EARN UP TO $15/HOUR." In fact, few, if any, graduates earn that much. Wilshire offered an English-as-a-second-language course in conjunction with its computer course. Although students were induced to sign up for loans, the ESL class was supposed to be free if students withdrew before the start of the computer course. Students who only took the ESL course were later surprised when lenders brought collection actions for the "free" course.

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- The recent bankruptcy of Allied Education Corporation, which operated about 30 schools in poor urban areas nationwide, revealed that the owners reaped about $900,000 in annual salaries and the corporation's assets included a Ferrari Testarosa valued at $175,000, 2 Jaguar and 1 Mercedes automobiles, a condominium, and a 65 foot Hatteras yacht valued at over $1 million. Incidentally, the school paid more money in salaries to recruiters than to teachers.

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It is no wonder that these astronomical sums are squandered because the system does not provide adequate safeguards to assure that --

- Only students with a demonstrable ability to benefit from the education are eligible for funds.

- Only schools with a demonstrated track record of success in educating and placing students in jobs are eligible to participate in the federal program.

- All students are given the opportunity to withdraw and receive refunds for the portion of courses not taken.

- All students are not forced to pay for misrepresented or inadequate education.

- The Department of Education is given adequate oversight of the quality and integrity of schools.

It is absolutely incredible that a vocational school whose educational mission is to train people for jobs may obtain tens of millions of dollars of federal grants and insured loan funds and yet never be required to graduate any students or place any students in jobs.

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On the other hand, if we are truly interested in meaningful vocational training, the time has come to change this wasteful program.

Before briefly discussing proposals for reform, I want to deal with two false issues frequently raised by vocational schools in attempting to hold on to the free flow of student loan dollars. These schools claim that they are the saviors of African-American and Hispanic students who could not obtain any job training without their help. These schools attempt to intimidate political leaders from curbing the abuses by claiming that any reduction in money or increase in standards will create a system of educational apartheid subjugating minority students to inferior or non-existent educational opportunities and foreclosing employment.

This allegation is not just nonsense; it is a lie. The current program only assures vast profits to the unscrupulous and broken dreams to minority students. Just look at the news reports, the testimony of students, the reports of the Department of Education's Inspector General, and the few actions filed by government agencies. Just look at the Higher Education Act and the Department of Education's regulations which provide few, if any, requirements related to the prevention of misrepresentations, the promotion of educational quality, or any standards of school educational accountability or performance.

The unfortunate truth is that, for many proprietary vocational schools, education is not the end product but an overhead expense. The more the overhead is reduced, the more the owner gets to pocket. Vocational school reform seeks to channel money to education and not to fancy yachts and cars. It's high time that we contribute to the education of students instead of their victimization.

The other lie is that private, for-profit vocational schools should be subjected to the same rules as public community colleges and other similar institutions. Although all segments of education should meet high quality standards, there are distinct differences between proprietary and public schools. A relatively small percentage of students at public community colleges participate in the student loan programs. In California, for example, less than 1.5% of community college students have federal student loans compared to 70% or more of the students at proprietary schools. Indeed, at the worst private schools, nearly 100% of the students are involved in the federal program. The public schools are not guilty of the fraudulent enrollment practices epidemic in the proprietary sector. Public community colleges in California have an open enrollment policy, and access should be preserved.

The ultimate questions -- where is the problem, where is the abuse, where are the major defaults, where are the dollars being lost -- all lead to the same answer: private vocational schools.

I want to highlight a few of the proposals which I have made to the committee's staff to curb many of the problems:

1. A proprietary vocational school's eligibility to participate in federal student aid programs should be based on its compliance with state education and consumer protection laws and accreditation standards. The Department of Education and guarantee agencies should have the ability to initiate administrative action under established administrative procedures to modify or terminate a school's continued eligibility to participate in the federal student aid programs if a school failed to comply with those standards.

2. Schools should not be permitted to operate as mills for the processing of grant and loan funds. Rather, institutions should appeal to a broader base of students than recipients of financial aid. To avoid the problem of schools preying on GI educational benefits, the Veterans Administration limits school eligibility to schools where no more than 85% of the students receive VA benefits. I propose a similar requirement.

3. Current law has failed to assure that schools are not set up for the purpose of immediately milking the financial aid programs. Although the law provides that schools must be in existence for two years, the provision is a sham protection. The provision is easily circumvented through changes in ownership and control, creation of new branches for nominally established institutions, and dramatic changes in programs of instruction or in numbers of students. For example, a school with a few students that has been in existence for two years can be sold to a new owner who changes the program of training and enrolls hundreds or thousands of new students. Although the institution has no resemblance to the "mom and pop" operation of the previous two

years, the radically transformed school is treated as if it were in existence for two years.

A vocational school should not be eligible to participate in student financial aid unless it has been in existence for 2 years under the same ownership and control, has not substantially changed its program of instruction, and has not substantially changed in size.

4. Schools should enroll only students with an ability to be successfully trained in the occupations to which a program of study is represented to lead whether or not students have completed high school.

5. Commissioned recruiters should be banned or the commission structure should be controlled so that they do not have an incentive to enroll as many people as they can cajole or connive into signing a contract.

6. Schools should be required to disclose completion and job placement rates before students enroll. Schools should also be required to disclose information concerning the starting salaries of graduates especially because the starting salaries of many jobs are near the minimum wage. Salary disclosures are particularly significant if the school makes any representations about salaries (e.g., "earn up to $10/hr."). This information will help some students to compare schools and to evaluate the claims and representations made by recruiters.

7. Financial standards should be enhanced and monitored to assure that vocational schools have sufficient resources to provide promised training and to pay refunds. I have provided the staff with detailed proposals.

8. Students should be permitted a short period of time within which they could cancel enrollment agreements and not be liable to the school or a lender. California law permits a student to cancel within five class days after the student attended the first class.

9. Schools should be required to pay a pro rata refund if students withdraw before completion. This requirement would address a multitude of ills. First, schools would have a strong incentive to retain students; consequently, deceptive or unfair practices designed to discourage attendance when student refund rights lapse would diminish and schools would be encouraged to offer counseling and other services rather than pay refunds to drop outs.

Significantly, taxpayers would benefit. Students who drop out before completion are the most likely to default on student loans. If a refund were paid for the portion of the course not taken, the refund would reduce the student's liability and hence the risk and financial burden to the federal program in the event the lender makes a claim after default.

In addition, a full pro rata policy follows the example of the VA educational benefits program for unaccredited schools. In light of the failure of accrediting agencies to adequately oversee vocational institutions, a pro rata policy for all proprietary vocational schools is appropriate.

10. Some standards for performance and accountability should be imposed on vocational schools. It is as appalling as it is astonishing that proprietary vocational schools need not satisfy any performance standards. Theoretically, a school could have no graduates, could have provided no training actually leading to employment for its students, and could nonetheless continue to be eligible to participate in the federal loan and grant programs.

Vocational schools have a unique mission of providing intensive education and training in a relatively short term to fit or prepare a student for employment. Schools which do not adequately perform should not continue to be eligible for student aid. California recently adopted a standard requiring that 60% of students complete their courses and that 70% of the graduates obtain employment within six months of graduation. I would recommend a similar standard for the federal program.

11. Federal financial aid program should not be available for instruction in a field unless a government sponsored survey demonstrates the existence of a large enough demand in the regional job market for the number of students seeking training. The survey should also demonstrate that the prevailing wage will be sufficient to permit students to meet living expenses and repay their loans. This provision would stop the funnelling of money into training for jobs that do not currently exist or do not provide sufficient earnings to enable students to repay their loans.

12. The Department of Education should be given the authority to write off loans in the event a school closes before students are able to complete the program of training.

13. A Student Tuition Recovery Fund should be established to cover students in states which do not have such a fund sufficient to cover losses from closed schools. The fund would cover the student's economic loss stemming from the closure of the school up to the amount of the total charge for tuition, equipment, and materials and interest on the student loan. The fund would be based on assessments levied on a small percentage of the tuition charged by schools. The Department would administer the fund and deduct the reasonable cost of administration from money in the fund. A similar fund has been established in California.

14. A student who is harmed as a result of any violation of

federal law should be able to bring an action for appropriate relief and should be able to assert the same defenses to the payment of the loan that the student could have asserted against the school.

Thank you, Mr. Chairman and members of the committee, for giving me the opportunity to express these views.

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Chairman **Ford**. I thank you very much. Maxine, what time frame were you talking about where the student had this short period of what they thought was a free experience in school and then later discovered that they owed a student loan program? When did that happen?

Ms. **Waters**. Exactly when did it happen in California? What time period did it happen after the enrollment?

Chairman **Ford**. Yes. What year was that?

Ms. **Waters**. I beg your pardon?

Chairman **Ford**. What year was that?

Ms. **Waters**. I think we're talking about 2 years ago.

Chairman **Ford**. The reason that it's important to us is that we made a change specifically with that kind of thing in mind in the Reconciliation Act in 1989, which I assume would have become effective in 1990, which got us in trouble with all the people sitting behind you in the front row. None of whom are from proprietary schools, all are from our more respectable institutions.

We said when you originate a loan you have to wait 30 days to get the money. Because if a kid walks in the front door, signs the paper and disappears, we shouldn't be lending the money and getting no education for it.

We made that applicable across the board. I didn't hear from the proprietary schools, but I sure as heck heard from all the other schools. Nobody wants you to hold their money back.

But the kind of situation you were describing there is either worse than you described it because it's a clear violation of the Federal statutes, or it was before the lending institutions were told to withhold their money for the 30 days to see if the student was actually going to show up and go to school.

We tried, incidentally, in this committee to go 60 days, but when we found out we were going to close every place from Harvard to Stanford if we did that, we backed off.

We have, so far, in adopting these tightening regulations in guaranteed student loans, tried to hold everybody to the same standard, being conscious of the fact that if we try to apply one standard to one kind of school and one to another, that we're going to be in court and found to be discriminatory.

Do you agree that if we are going to tighten up the requirements on guaranteed student loans they should apply to people in all schools, or just proprietary schools?

Ms. **Waters**. Oh, they should apply to all schools. You should not be deterred from having tight standards because somehow you may harm the good schools. If the standards make good sense, then everybody should have to abide by them and I think it would serve the system well.

I don't think we can continue to allow the system to be ripped off because somehow we fear that the good schools can't meet the standards. If they're sensible standards, everybody should be able to meet them.

Chairman **Ford**. Bart, how about you?

Mr. **Gordon**. I agree with Maxine's statement, and I very sincerely want to compliment her on, particularly, what she calls the two big lies and associate myself with her remarks.

Let me address the question you just asked concerning should everybody be treated equally. Certainly, they should be treated equally, but I think we also have to keep in mind the fact that proprietary schools enroll about 10 percent of the students, and they account for 50 percent of the defaults. Now, that's got to tell you something.

Now, I think that, potentially, what you might look at doing, and what we often do as businessmen, and various people come into my office and say, "Why are you putting additional regulations on us?" And I point to the S&L and other problems.

And what often happens is when you put Federal money on the table, most folks are responsible. But you can have a few bad apples that ruin it for everybody else. Most S&Ls weren't crooks; a few were. And so what we as legislators wind up doing is overregulating the good people in order to protect us from those very few that can cause a great deal of problems.

And I think there is a distinction between a school with a 60 percent or 50 percent or 30 percent default rate, and one with a 2 or 3 percent default rate. And I think that some of the regulations that we have, the paperwork, things of this nature, you could have a cut-off, maybe at 10 percent or something, of default rates. Those below that would have to have less paperwork than maybe those over that amount so that you don't overburden the schools that are doing a good job.

And let me say that I think we need to be doing more today than indicting proprietary schools. But from the comments from the podium, I've just got to tell you that maybe Maxine's and my experiences are different. Maybe California and Tennessee are different than Pennsylvania and Michigan.

But let me tell you, I have gone into these schools. I have pretended that I was a student. I have been hot-boxed. I have written an article about that in the paper afterwards. And when I did so, students came out of the wall to tell me about problems they've had. Administrators of programs came out of the walls to tell me how they were asked to misrepresent the institutions on a variety of forms. And they finally had to leave those schools. They were afraid. They thought it was immoral.

Again, maybe our States are different. But you can't just go in to the showpiece proprietary schools and talk to the students there. You've got to look deeper. We have in our States, and believe me, believe me, there is a problem. And it's go to be addressed or you're going to kill the goose that laid the golden egg.

And what I see coming down the pike is this: I think we all share a common interest, and that is that part of the problem with the default rates is that we're overburdening people that are low income, at risk, and we're putting too much loan burden on them.

And one of the options is to provide more grants rather than loans. You can't be providing these additional grants until you clean up the system. There is a problem there right now.

And you're going to have these folks come to you and say, "It's just a few bad apples. We're cleaning up our act and we need to have a larger grant system. Let's don't burden these people with loans."

And I'll tell you what will happen is this: Right now I found that many schools, their pricing system is the Pell grant plus whatever amount you can get for loans.

Ms. **Waters**. That's what it is.

Mr. **Gordon**. And that what you're going to find is these schools are going to change that. They're going to say, "Fine. We don't want to be in the loan program." And if we might have had an 18 month program before to teach you to be a truck driver or whatever, how our programs are going to cost exactly whatever the grant is going to be. And they'll reduce their time periods.

Chairman **Ford**. You do know that we've put over 400 of those schools out of business in the last year?

Mr. **Gordon**. And there are many more that need to be put out of business.

Chairman **Ford**. Well, we'd like to see how many we're putting out of business with what we've done before we tighten it up any tighter.

Mr. **Gordon**. Part of that, Mr. Chairman, is why in the world do we not apply the same standards for Pell grants as we do to student loans? If it's good business to say that a school with a high default rate shouldn't be getting loans, then why are we turning grant money over to them?

Should we not overlap those same restrictions on these Pell grants, particularly since there is absolutely no control over them? You can not, you know, go to the Department of Education—if a constituent of yours came to you and said, "Bill Ford, how many students that got Pell Grants last year graduated? How many got jobs?" You couldn't tell them. There's no record of that whatsoever anywhere.

Chairman **Ford**. I can't tell them how many Ph.D.'s got jobs last year either, Bart.

Mr. **Gordon**. Right. Fine.

Chairman **Ford**. That's the mystery of dealing with this thing called education. You don't know when you've got a person educated. You don't know when you've given the right kind of education, and you don't know how much it should cost.

Mr. **Gordon**. But don't you think we should have some accounting? Don't you think we should have some idea? On a $5 billion program shouldn't we have some idea?

Chairman **Ford**. When the American people decide to make me the Education Czar of this country, who can write the rules and regulations without consultation with anybody else and with no due process to anybody involved, I'll take care of these problems.

Short of giving up all you would have to give up to give me that kind of power, you've got to expect something less than a perfect system. And you've got to make a trade-off—how much Federal dictating do you want to do against how much freedom you want to take away from people. And it's tough.

Now, those of us who were here when this legislation originally passed constantly had to reassure our opposition that we would not empower Washington to do too much. And we filled the legislation up with thou-shalt-nots for Secretaries of Education.

And now people come in and say, "Why doesn't the Secretary of Education decide what is and what is not a good school?" I've never met a Secretary of Education that I would trust with that kind of power. And that's our problem. We have a system for all our colleges and universities, and high schools for that matter, of accreditation that's very much like the system for the proprietary schools. It's voluntary membership and it's supported by the people who belong. It's not government.

There's nobody in the government that tells the high schools in Tennessee what a good high school is. What's the accrediting agency in Tennessee? Middle States? Southern States?

Mr. Gordon. The Southern Association.

Chairman Ford. The Southern Association. That's a voluntary association. Middle States is the one that's in trouble because it wants diversity. In my part of the country it's North Central.

And when I was a school board attorney, I used to wonder about this. They're threatening to take away our accreditation. So what? Well, the so what was that our kids couldn't get into college without taking an entrance exam, even if they successfully graduated from high school. So it was a heavy threat.

And then I started looking into it as a lawyer. How do you deal with these people? Well, you don't because they're not a governmental agency. You can't scream and holler under the constitution that the government's doing something to you. It's an accrediting agency doing it.

Mr. Gordon. But the problem, Mr. Chairman, is you have accrediting agencies that have developed a good old boy system. For example, one of the accrediting agencies has a board member with a school that has a 53 percent default rate that last year had $24 million in defaults. This person is on one of those boards.

So you have a variety of boards and if you are decertified from one school, then they go to another accrediting agency. It has become a good old boy system. I'll accredit you and you don't cause me a problem.

Chairman Ford. Just like doctors and lawyers.

Mr. Gordon. That might very well be the case. And if doctors and lawyers were given——

Chairman Ford. You're a lawyer, aren't you?

Mr. Gordon. Yes, I am.

Chairman Ford. Well, in my State, on average, 35 percent of the graduates of law schools ranging from the very top schools in the country to some that are a little cheaper to attend, fail the bar examination on the first try.

That has been consistent since I took the bar examination in 1951. There's never been less than 35 percent of the successful graduates of law school who fail the bar exam.

Now, nobody says that the law schools are not doing their job because only 65 percent of the people who successfully finish law school can get a license to practice law.

Mr. Gordon. Part of what's happening is the licensing process is doing its job by weeding them out.

Chairman Ford. No. You can come back and take it again. Some do it two or three times. But the point is that, generally in education, except for law—as a matter of fact, nobody can tell you whether a doctor knows a darn thing when they get through with medical school because they take the same test that a nurse takes in my State, a general science test, which is passed by a nurse with 2 years of college.

And it's the same test that a doctor has to take. The medical society decides when a doctor is ready to practice and when he won't. The bar association decides when I'm not going to practice law in Michigan anymore.

And we do it in all these fields so this is not unique in education to let educators make these decisions among themselves.

Mr. GORDON. But the distinction is that 10 percent of all the school students are going to proprietary schools, and they result in 50 percent of the defaults. That's got to tell you something.

Chairman FORD. Well, I don't want to denigrate community colleges, but you better make some more comparisons. Community colleges in major cities, for example, like mine, are pretty bad. The kinds of things that Maxine claims that they are using to sucker young minority students and adults into the program—we're the only hope they have got.

That part of it is bad, but the truth of the matter is that there's enough truth in it to make it believable. And it's hard to break through that.

I don't want to take any more time because I have other members here. Joe Gaydos.

Mr. GAYDOS. Let me ask my two colleagues this. Mr. Gordon, you have made an undercover investigation at one school, right?

Mr. GORDON. At a couple schools.

Mr. GAYDOS. A couple of them. Could you give me some background and the circumstances as to who had initiated it and which agency did it, or did you do it on your own? Just give me a little background.

Mr. GORDON. I was concerned that, you know, that HEAF went bankrupt because of the proprietary schools, the loans there, the defaults. I was afraid that with those schools coming into the Tennessee Student Assistance Association it might bankrupt our system and no one would have access to loans.

So I got out the list of default rates in Tennessee and was appalled at these. And I took a couple of the highest ones. I went to a school that had a 66 percent default rate. I did it on my own.

And I went in as if I was a student, and I was hot-boxed. I was told I could get free money. You know, it was simply an effort to not tell me I had any kind of responsibility, but rather, to get me to enroll there.

And I found out from recruiters in other parts of the State, that recruiters are paid more than the instructors. Their purpose is to get people in, not to educate them.

Mr. GAYDOS. Maxine, in your situation over there you——

Ms. WATERS. Before we continue, we're going to have to have some rules I know that you will appreciate. If he is Mr. Gordon, I've got to be Ms. Waters. You can't call me by my first name unless you do it for everybody. Is that okay? I was going to tell the chairman that, too.

Mr. GAYDOS. All right.

Ms. WATERS. All right.

Mr. GAYDOS. If you feel better, that's fine with me.

Ms. WATERS. Well, no. Just consistent. Yes.

Mr. **Gaydos**. All right, Ms. Waters, let me ask you, on the particular school you referred to, how long was it in existence? Was it just a fly-by-night or has it had a good history, say, like a 5 or 10 year life period? Could you answer me that?

Ms. **Waters**. I think they've been around for somewhere between 5 and 10 years, yes.

Mr. **Gaydos**. Do you know accurately how long they've been around?

Ms. **Waters**. No, I don't know exactly.

Mr. **Gaydos**. Would I be wrong in assuming that it would be one of these newer schools?

Ms. **Waters**. You would be wrong in assuming that it's a fly-by-night school and it is unusual rather than the order of the day in California.

Mr. **Gaydos**. Well, is it a national school?

Ms. **Waters**. One of them that I mentioned here is national.

Mr. **Gaydos**. Well, the one you were talking about, the one that you had—and I'm not questioning your sincerity in raising your points because from what you described, it looks like it's a pretty raw operation.

But what I'm getting at is that we do have, and it's understandable, a lot of fly-by-nights that have come into existence the last 5, 6, 7 years, you know. For instance, I like to compare it with the schools that we have in Pennsylvania, 30 and 40 years in longevity, where they've been turning out secretaries, they've been turning out medical assistants for 20 and 30 years.

And those are the schools that I'm pretty familiar with. And I've always found that the newer schools seem to be, may be, those that have some of those propensities that you described.

Ms. **Waters**. I see. Well, the only thing that I can say is if these schools fall within the category of new, as you describe as somewhere between 5 and 10n years, there's just too many of them.

I don't even quarrel with the default rate as much as some people do. What I quarrel with are practices such as these phony tests that, basically, ask "can you spell cat?" If you can spell cat, you qualify to come into the program and you will benefit somehow from training for something called a physician's assistant, kind of a nonexistent job.

I quarrel with the fact that some students simply go in and sign the forms, walk through the door, kick back money, for example, to the operators, and never show up for training. I quarrel with the fact that you have computer schools in America with no computers.

I quarrel with the fact that you have recruiters that stand in unemployment lines and at grocery stores and welfare lines and hold out that their schools are going to train people in 4, 6, 8, 10, 12 weeks for jobs that do not exist.

I quarrel with the fact that we don't have standards that they must comply with before the Federal Government will allow them to be in this system.

Mr. **Gaydos**. Well, with your permission, I quarrel with those facts, too.

Ms. **Waters**. Why don't we do something about it?

Mr. **Gaydos**. I find them unacceptable.

Ms. **Waters**. Yes.

Mr. Gaydos. But let me ask you a question. We've had witnesses before this committee that have testified in the past on several occasions that they don't want a comparison drawn between proprietary schools and so-called career school and the more formal educational institutions because proprietary schools, by their very nature, will draw upon the student that is least capable of paying the loan back.

Now, I want to ask you the question. Do you think there's any credence to that distinction, and should we be sensitive in that area? That a lot of students that go, for instance, to learn the wherewithal to be a refrigeration expert or to be a medical technician. It may be a 6 month course, maybe a year and a half course because some of them are that long.

Those are the ones, many times, that are going to be unable or have been unable to make repayments. And there's always been the argument that they should get grants rather than loans because of their background.

And we're trying to address their problems. May I have your opinion along those lines. Do you think that's a valid distinction that should be held? Is it something that we should pursue? Because you're quite critical, And I'm not questioning you for being critical because you've experienced something that I figure is unacceptable and I would agree with you is unacceptable is you have that type of operation. I haven't experienced that in my particular State, so could you give me some advice along those lines?

Ms. Waters. Well, let me just tell you what I think about how our system should work in terms of training people in this country. I think that folks who want to be trained in vocational schools, et cetera, should have assessments. I think the assessments should help direct them to the best training for them.

For example, if someone walks in the door and they can't read or write, I think it is unconscionable to train them for something called medical technician when they can't read what the tools are that they're supposed to be using. I think they should be funneled into another system where they can avail themselves of some very basic education that will help get them to the point where they could benefit from certain types of training.

Mr. Gaydos. Well, do you have evidence and do you feel that that's the case today? That that's occurring?

Ms. Waters. Absolutely.

Mr. Gaydos. You do?

Ms. Waters. Absolutely.

Mr. Gaydos. Could you make them available to me? I'd be very interested in having that.

Ms. Waters. Well, come on out to California. I'll take you by some of them.

Mr. Gordon. Joe, could I quickly go to your first question?

Mr. Gaydos. Yes, sure. See, under the existing regulations, a lot of schools can't do that, or aren't supposed to. If they do do it, then that is justifiable cause to close them down. And if that is occurring, fine. But I'm talking about indicting the whole system, which I resent. And I have made effort on my part to try to defend against indicting the whole system because you're not supposed to be dong that.

Ms. **Waters**. We're not indicting the whole system. And, you know, when that is referred to as indicting the whole system, I take issue with that. What I'm telling you is we have a scandal on our hands. I'm part of the problem.

Mr. **Gaydos**. Yes. Aren't you part of it?

Ms. **Waters**. I'm part of the problem now. We have a scandal on our hands. In my estimation, the scandal is as outrageous as the S&L scandal that we were confronted with because we are allowing thousands of unscrupulous private proprietary schools to rip off the government. They do not train anybody for any jobs. No wonder the people can not pay the loans back. They don't learn anything. They can't get any jobs based on, supposedly, the training that they were supposed to get at these schools.

What I'm saying to you is we have an opportunity to make this system better. I am not suggesting to you that there is no need for vocational schools. What I'm suggesting to you is we do not need to close our eyes and say, "Well, we don't think the problem is so bad." The problem is so bad.

We don't need to say we can't do anything about it. We don't need to pull in the good schools and say if we have certain standards we're going to hurt the good schools and we don't need to do that. We need to take the blinders off, support education, alternative education. Vocational schools, public schools, I don't mind.

But if you have standards, if they have to go through some hoops in their State to comply with consumer and Department of Education laws in their State before they are eligible to be able to get these Federal Government loans, I think you will see the default rate go down. I think that some of the bad operators won't get a chance to defraud the system in the manner that they're doing.

In a few years, you're going to look back at communities that have received billions of dollars, and everybody is going to throw up their hands and say, "See, we tried to help them. We put some money into these areas and nothing happened. They didn't take advantage of it."

Well, people are being taken advantage of. These people who get up and go someplace and say, "I'm going to try one more time. Even if I dropped out of school, I'm going to enroll in this school," only to find that they are victimized by these operators are people who will never make it in the system.

Mr. **Gaydos**. If I may, we're very familiar with those situations. We've had some in our own State. Pennsylvania is not exclusive, but I'm going to follow what the chairman has suggested, or follow his lead. And he's very concerned and I am too, and I think the committee is, that somewhere along the line the correction in course, or the remedy, if pursued as some suggest, is going to hurt some of the good authentic proprietary and career schools. That's what we're concerned about.

Ms. **Waters**. It doesn't have to. I think that we can——

Mr. **Gordon**. We're all going to be hurt if the system collapses.

Mr. **Gaydos**. Well, let me ask you one thing then, Mr. Gordon. When you made that investigation, have you investigated other schools, too?

Mr. **Gordon**. Yes, I have.

Mr. **Gaydos**. How many did you do?

Mr. **Gordon**. I have. And what's happened is—and I think Ms. Waters makes a good point. It's not just the taxpayers being ripped off, you know, it's the students that are being mistreated. And by virtue of the coverage, if you will, that I received from some of the things that I did, then students and administrators across the State who had wanted to tell their story started coming to me because they thought this is somebody that we can listen to.

GAO has gone into one of the schools now. You know, there are other investigations as well. As a practical matter, most of the horror stories we're talking about are illegal. And you have regulations that are supposed to stop that. But the Department of Education is not overseeing it. And that's what's got to happen. There's got to be some oversight; the rules have got to be enforced.

What we have found, and earlier you said, are these new schools. Most of them are schools that have been there for the last 5 or 10 years.

Another thing that I found, and, again, I can give you the documentation on it, was that a number of former employees from the Department of Education, many of which were in enforcement, left the Department of Education, set up schools, and became partners in schools that they used to regulate, and find all the loopholes.

And you'll find that they are in some of the worst default schools around because they're taking advantage of the information that they learned. Simply, we've got to do a better job of enforcing it.

There really is a problem, and it really is broad based.

Mr. **Gaydos**. One very quick final question because some other members want to ask some questions. Have you experienced or have you visited or do you have knowledge of 2 year schools, 4 year colleges, community colleges? Have you gone into that sector, too?

Mr. **Gordon**. We have looked at those rates, and quite frankly, you know, with limited time and limited resources, most of those institutions have a 5 percent or less default rate.

Mr. **Gaydos**. Well, I assure you there are many of them that don't have that default rate. I can assure you.

Mr. **Gordon**. I'm sure. And, again, there ought to be more than just a default rate. It should be more than the only gauge. But we don't have much else to look at right now.

Mr. **Gaydos**. Well, then you're suggesting, and it's probably a correct suggestion, that since the proprietary schools or the career schools seem to have the greater default rate, that that's where we should direct our attention primarily.

Mr. **Gordon**. I'm saying that if you have 10 percent of all the schools are causing half of all defaults, limited time and limited resources would seem to indicate that that is where you spend your first attention, which is not to say that's the only problem. But it's certainly a place to start looking.

Mr. **Gaydos**. That was the factor involved in your decision to go into this particular school and make an investigation?

Mr. **Gordon**. Yes, sir.

Mr. **Gaydos**. Well, Ms. Waters, is there any other thing you want to add?

Ms. **Waters**. No, except to say that the sad facts about many of these people who are being ripped off by these schools. The facts are that they can not then avail themselves of rental assistance money and many other Federal programs because once they default in this area and they can't pay the loans back, it's a vicious cycle. Then they can't get any money to go to a community college or to a public school; they can't get rental assistance from Federal Government; they can't get a whole host of resources that would be available to them had they not defaulted. And I think we're doing them a great disservice to allow this to continue.

Mr. GAYDOS. Well, thank you very much. Mr. Coleman.

Mr. COLEMAN. Thank you. Thank both of you for bringing to our attention the down side of some of these programs. That is why I indicated earlier that there are some things broken that need to be fixed. And I think your comments are along those lines.

Mr. Gordon, let me ask you, in your bill. H.R. 2246, which makes some significant recommendations and changes here. One of the things we've found in the past is that while completion rates may indicate to some that the course work was good or bad and the quality was good or bad and what have you, we also have this phenomenon of the nontraditional student who may want to go back, for example, to a community college and take a course or two or three.

And I know that in your course of study completion rate that this is going to be an identifying factor for purposes of evaluation and accreditation. And I wonder how any suggestions—I think you understand that—how we might be able to recognize this phenomenon and at the same time deal with what I think the thrust of what you're getting at is?

Mr. GORDON. I think the way you do that is have reasonable thresholds. Certainly, a school in an inner city, like here in Washington, DC, teaching the same course as a school in Michigan, Virginia is probably going to have a lower completion rate, and a higher default rate. And I think we have to recognize that.

But we have to have some kind of bench mark. And I think by using default rates, and by using course completion rates, and by using job placement rates, it gives us more bench marks to start looking deeper.

But I think the important thing is, you don't say, okay, a 5 percent level. Certainly, when we passed legislation last year, that said that a 35 percent default rate would be the demarcation line, that was a narrow threshold. And by using higher thresholds on completion rates and default rates in this, within this 25 to 35 range, I think you take into account those schools that do deal with the so-called at-risk population.

But you get rid of these outrageous places with 50 and 60 percent default rates and low completion rates. We've also got to do more in accrediting. Do I have a better suggestion? Is this the perfect way to do it? No. Do I have a better suggestion? No. And I haven't seen anybody else come up with anything.

Will some good schools, some good students, be probably mistreated by this? Yes. But you have to have some type of system or you're going to have many, many more students mistreated by winding up at schools that don't do the job.

Mr. COLEMAN. Well, I think this is one of the challenges that we face. And I hope that there may be some suggestions by those who follow as to how we might be able to define your broad language, which I think we have always found to be good in spirit. But when it comes to practical implementation, it runs into some troubles.

Mr. GORDON. As a practical matter, I know I'm not a member of this committee. I'm not going to be totally specific.

Mr. COLEMAN. Oh, I'm not putting you down for that.

Mr. GORDON. I know. So that's the reason I tried to be broad because you're the ones that deal with this every day. You're the ones that know more about this than I do. I tried to give some broad categories, some broad ranges. And then I trust your expertise in building interest in this subject to narrow that down.

Chairman FORD. Will the gentleman yield?

Mr. COLEMAN. Sure.

Chairman FORD. I should have made it clear earlier. We noted Sam Nunn's report yesterday. He's an old friend of mine and I have a great deal of respect for the way in which he goes about investigating anything. And we've invited him—there are three hearings on this same subject matter—to appear but we've got a time problem with his schedule. And if he isn't able to appear in person, we will place in the record contemporaneous with your statements the report that he released. We don't want anybody not to have the opportunity of every approach that's being taken to airing these problems.

One way or another, the results of the Nunn investigation will become a part of this record and will be considered along with what everyone else says.

Mr. COLEMAN. Does the State of Tennessee, do you think, have adequate safeguards in place for licensure?

Mr. GORDON. No. To be eligible for student loans and financial aid, you have to have your State licensing, you've got to have one of these accrediting agencies give you accreditation, and then the Department of Education has to sign off on it.

Many States are very lax in licensing. I think there was some model State licensing program that's been developed that Tennessee now has implemented. And it's something like you have to have a $5,000 bond. You know, it's a very small thing.

But I think 10 percent of the schools, many of those fly-by-night type of schools, were eliminated because of that. And I certainly think that one thing your committee needs to do is look at those uniform licensing procedures for the States, maybe update them a little bit, use them as a model, and potentially even say, just as we say to States, "You can't get road money if you don't have 55 or 65 mile an hour speed limits."

We might also say, "If you don't have at least a minimum amount of State licensing requirements, then you're not eligible for financial assistance." I think you might give some though to that.

Ms. WATERS. I think it's a good idea. I think the States should be more involved in oversight and responsibility for the licensing of these schools prior to the Federal Government allowing them to be in the system. I think that would be very helpful.

Mr. COLEMAN. The administration is proposing something along those State risk-sharing lines such as strengthened licensing procedures and default triggers. So there's something brewing out there regarding that.

Thank you, Mr. Chairman.

Mr. Gordon. You know, after I introduced my Pell Grant bill the administration included language that would eliminate high default schools from the Pell Grant program in their budget. It's important that on this Pell grant issue we put the same type of, whether it's restrictions or guidelines, we have for student loans on Pell Grant eligibility as well as we do for student aid. That's something the administration has proposed, and I hope this committee will give very serious consideration to doing that.

Mr. Gaydos. Mr. Gordon, did you state, for a point of clarity, that 10 percent of the career students are constituted in career school of the total students?

Mr. Gordon. It's my understanding that proprietary schools amount to about 10 percent of the students in the student bank, that they have about 35 percent of the grant dollars, and that they amount to about 50 percent of defaults.

Mr. Gordon. Well, we'll have some witnesses that will be testifying along those lines. So that's your concept.

Mr. Gordon. That's my understanding, you know, in those general, easy to understand figures.

Mr. Gaydos. Mr. Sawyer.

Mr. Sawyer. No questions.

Mr. Gaydos. Mr. Andrews.

Mr. Andrews. Thank you, Mr. Chairman. Thank you, both colleagues, for your excellent testimony. Congressman Waters, I know, in point ten of your recommendations you suggest new standards for performance and accountability. And I know Mrs. Roukema's statement talks about the financial standard of accountability by reducing the percentage of the Federal guarantee.

I would ask each of you to respond to this idea: What if we were to devise criteria which, somehow, fairly distinguished between legitimate proprietary schools which have acted in good faith and have a good track record, from proprietary schools who have exploited the process, much in the way that you've outlined for us today, and required that for those who have exploited the system, their students could not receive any further guaranteed student loans unless the principal of the school co-signs the guaranteed student loan note as a co-guarantor? What would your reaction be to that?

Ms. Waters. Well, it certainly wouldn't bother me. I think the school would go out of business. They would not want to operate.

Mr. Andrews. Is that a bad thing?

Ms. Waters. It's a good thing. I am impressed with the idea that you would be willing to separate in some fashion the good schools from the bad schools. I guess you would have to set up some way of determining if you have done this, if you have been, you know, been filed on by the attorney general this many times, however you would set it up to distinguish them, if that could be done, that would be wonderful that we could pull out the bad ones from the good ones.

As far as signing on to guarantee the student loan, it sure wouldn't bother me. It would be better than seeing operators with boats and cars who have been exploiting students maybe have to put them to some good use when they come and get repossessed when the student defaults.

Mr. GORDON. My concern with that—and I would certainly like to see the risk shared broader—my concern, though, is what about the poor student, the so-called at-risk student, the underprivileged student, that even if it's a 95 percent loan, doesn't have, you know, maybe a parent at home or a friend that can sign that loan, then they can't get it.

So I think we have to be concerned that those low income folks that can't find a guarantee or guarantor, we don't want them out of the system. And so whatever we do in trying to share that risk, we have to have a safety net, sorry to use that term, for those low income students.

Mr. ANDREWS. Maybe one of the ways that we——

Ms. WATERS. Well, I thought the owners would guarantee it then.

Mr. ANDREWS. Yes. I'm talking about the operators of the school.

Ms. WATERS. They would guarantee for those students that you're describing. That's what you said, isn't it?

Mr. GORDON. What I would say, again is that everybody's not going to make it through. Potentially, you might say that they guarantee a 50 percent or a 35 percent or some default rate. In other words, if everybody defaulted, then they wouldn't have to pay the two or three that did.

Mr. ANDREWS. Right.

Mr. GORDON. But once they reach a threshold of some figure, 35 percent, 25 percent, 50 percent, then money starts coming out of their pockets.

Mr. ANDREWS. There are two premises of my question that I'm interested in you evaluating. The first is that it is possible to fairly distinguish between the good guys and the bad guys. And I pose that as a question. I think it is. And I think there are many more good guys than bad guys in this field.

And then the second premise is that the most effective means of regulation is to give a vested financial disincentive for those who would exploit the system. Make them pay for it, and, essentially, give them a negative vested interest.

The other point that I'd make in response to Bart's point, is I think that if we're going to evaluate accountability, more credit should be given to a school that takes on a harder case to educate and place. Clearly, it is more difficult to educate and place a 17-year-old unwed mother than it is a 35 year old electrical engineer. And there ought to be some kind of credit given to a school that takes on that harder placement case.

But I'm interested in any further thoughts you'd have beyond today as to effective means of creating financial disincentives to the operator of the school, the bad school, if you will, to exploit the system.

Ms. WATERS. Well, I appreciate that and I, too, would support the idea that you would give credit to those institutions that are taking on the greater share of hard to educate or hard to train students. I think that makes a lot of sense.

You had one other point that you closed with. Would you repeat that?

Mr. ANDREWS. Well, my initial premise was that it is possible to fairly distinguish between the schools that are legitimately trying to educate people and those that are trying to rip off the system.

And, again, my premise is that the huge majority of the proprietary schools fall into the first category. They're legitimate people, the ones I'm familiar with.

But is it possible to draw a fair and rational line between the two?

Ms. WATERS. I think so.

Mr. GORDON. I think there can be. But also, Rob, you're going to have to keep in mind when you do that, there are going to be some legitimate schools and some good students that are going to be cut out. And I think you have to keep in mind, "Yes, we're going to have a line, and unfortunately, there are going to be some people that are going to be victims of that line."

But if you don't draw that line, everybody is going to be a victim because, again, you're going to kill the goose that laid the golden egg.

Mr. ANDREWS. Well, I think what you very eloquently have pointed out this morning is that the ultimate losers in this system are the students who most need the education. Because there are fewer dollars available, there is less credibility publicly for the programs. And in the individual case, individual families and students are exploited by the unethical operators.

Mr. GORDON. You have to have a system where the instructors are being paid more than the recruiters. And that is not the case now with most. And as a recruiter told me from one of these schools——

Mr. ANDREWS. Don't tell the NCAA that, by the way.

Mr. GORDON. They were bounty hunters and they received bonuses for the students that came in there. There was no bonus to the instructor for the students that passed. There was no bonus to the recruiter for the student that got out and got a job.

And so I think you're going to have to look again at default rates, course completion rates and job placement rates. And somewhere, in the wisdom of this committee, you're going to have to draw some arbitrary lines that are going to hurt some people. But more are going to be hurt if you don't draw that line.

Mr. ANDREWS. I thank you colleagues for your very, very inspiring testimony. Thank you.

Mr. GAYDOS. Mr. Roemer.

Mr. ROEMER. Thank you, Mr. Chairman. I, too, would like to associate myself with the remarks of the gentleman from New Jersey up here and thank the both of you for your expert testimony, your cogent insight and your overall analyses. If the chair will bear with me, I agree with much of what you're saying. I understand the chairman's concerns about getting at this problem without harming those many good schools that are educating people, and that are helping those people that need help most.

From a constitutional perspective, I understand the chairman's concerns as well. But, also, as we study this issue, we see that the big losers are going to be all our students and all our people out here fighting for more education dollars if we don't clean this system up.

In Indiana, for example, the S&Ls are in pretty good shape. But that does not distinguish the problem within our State for Hoosiers who are saying the government is not doing its job.

I think we can draw the same analogies here. Maxine pointed out that so many of these trade schools are computer oriented without computers. I have read of truck driving schools without trucks. We have 700,000 graduates a year that can not read their high school diplomas and some trade schools that are exploiting precisely these people.

They are not helping them, and we are not doing anybody a service, not these people seeking an education and not our own efforts to get money for education. The American public is going to come to us and say, "Look, they are not spending the money well, so we are not going to give them any more across the board."

I would like to hone in a little bit more and ask you specifically how we restructure this system not to penalize those good trade schools that are doing the job. I went to a graduation ceremony on Friday from ETS, the Employment Training Services, that gets at these most difficult people to teach and to educate, people that are 28, 30, 35 years old, that have three kids, that have dropped out of school, that don't have a GED.

How do you envision these trade schools operating in the future? How do we restructure them is my first question. And then, secondly, Bart and Maxine, if we don't have this oversight at the State level, how do we get the oversight within the Department of Education to cross reference, and to keep better track of the students, where they are and what they have repaid?

What are some means by which we can manage and oversee this process better so that we can argue in the future for more education dollars?

Ms. WATERS. Let me just start with—one of the proposals that I have talks about only students with a demonstrable ability to benefit from the education are eligible for the funds. I really do believe that we should have assessments so that students are directed to the correct institutions to deal with their problems.

If we have students who are illiterate, they should be directed to the systems that provide basic education in order to teach them to read. If we have students who would benefit from certain kinds of technical training, then they should be directed into the systems, be it vocational or public schools, that would train them in the areas that they have demonstrated that they could benefit from.

And I think it is not too difficult to set up those kinds of systems. That's one thing I don't think that we should have private schools that give no tests and say we're administering tests to see if you can benefit from training. And the tests, in fact, do not test anything. They simply are tests that ensure that everyone is eligible to benefit from the training that they give.

Secondly, only schools with a demonstrated track record of success in educating and placing students in jobs are eligible to participate in the Federal program. If you have students who graduate no one, who connects no one with jobs, then those students, those schools should not be eligible to participate in the program.

All students are given the opportunity to withdraw and receive refunds for the portion of courses not taken. There's no reason why schools should receive payment for students who drop out after they've only been in the school for a few weeks. And that is going on all over the country.

If they do not get to a certain point in that education or in that training, then the school should be made to refund to the students the dollars that they are receiving by way of student loans.

All students are not forced, are not forced to pay for misrepresented or inadequate education. You have schools that have some of the most ridiculous advertising that's going on in newspapers across this country. And we read it, we see it all the time. We pass right by it.

It is so outrageous until you laugh at it. I call them all the Joe Blow School of Computer Nothing because the ads are just absolutely outrageous and ridiculous. And you know them in your State and your communities. You know that they're not training.

And when they have that kind of misrepresentation, students should not be forced to pay. If they say that, you know, 90 percent of our students get jobs making $15 an hour or more and they advertise that, we should bust them for that lie if they can't prove it.

The Department of Education is given adequate oversight of the quality and integrity of the schools. Now, this business of us not being able to tell the Department of Education what it should do is kind of outrageous. We are the Congress of the United States of America, public policy making body, that is supposed to be able to legislate in ways that will direct our agencies and departments.

And I think we should get about the business of doing this instead of feeling like we're victims that can't do anything about giving some direction in this area. I would like to see State controls prior to schools being eligible to participate, and I would like to see the Federal Government have some oversight so that it ensures that all of the States have licensing requirements and other kinds of requirements that would make good sense before these private postsecondary schools can even be considered. Those are just some of the things that I would recommend.

Mr. GORDON. Tim, let me try to maybe be quick in a broad way. Since we've talked a lot about proprietary schools, let's define what a proprietary school is. A proprietary school if a for-profit school. And how are they making their profit now? They're making their profit not be educating students; they're making their profits by enrolling students.

And I think we need to change that system. You know, their profit ought to be based on educating students, not enrolling students. Then you'll find that teachers are paid more than recruiters.

So what do we do? You know, you have to have some kind of bench mark for success when it's over with. And once again, I go back to completing courses, graduation rates. I think that's a bench mark. Getting a job, job placement, that's a bench mark. Paying back your loan, that's a bench mark.

And so if you will use these bench marks, draw some lines, and say, "Okay, if you don't meet these rates, then you're not eligible for the loans." That means they're not able to make a profit. You're going to see the way they do business change. You're going to see, if you can make it where to make a profit you have to educate rather than recruit, you're going to see them, as Maxine says, they're going to test them when they get there. And they're going to say, "Okay, this person would make a truck driver, but to put him in hygienist school would be ridiculous. But right now, as long as I'm getting money for whatever they do, why should I care?"

So if you have to educate them, they're going to try to test them and place them in the best location. They're going to try to have counselors to try to get them through those courses. And then, when it's over with, they're going to have someone to help get them placed in a job.

You've got to make the for-profits make a profit on educating, not recruiting. And that's how I think you'll change the system.

Your next question, as far as the recordkeeping system, the Department of Education for the last 3 or 4 or 5 years has been trying to do this. They just haven't simply gotten it done. And this committee is going to have to mandate it, provide the funds, do whatever is necessary, so that these universal lists are available where you can plug in to the IRS and see whether or not these people are telling the truth on their application forms.

You know, there's a fellow in prison now in Tennessee that was a recruiter at one of these schools. He got into trouble for some other reasons, but he's in prison right now. He said on the record that the toughest thing for him to do was to come up with false names. It got to the point where he was just writing people's names down and addresses. He had trouble coming up with new names, and this was the hardest thing he had.

You know, you're going to have to be able to plug into Social Security numbers and make sure these people are real students. You need this kind of a universal list.

I had a staff person in my office call over to the Department of Education and just say, you know, "Do you have any record of me? Do you know whether I ever had a loan?" Well, he had one, but they had no earthly idea.

Mr. ROEMER. Bart, when you talk about bench marks and you talk about graduation rates and you talk about getting a job, where do we start to draw those kind of somewhat arbitrary bench marks? You know, we surely don't apply that to Notre Dame in my district or St. Mary's in my district——

Ms. WATERS. But you do it with JTPA.

Mr. ROEMER. Pardon me?

Ms. WATERS. Job Training Partnership Act that operates in your State for job training. You do have bench marks. You do exactly that in the Job Training Partnership Act program.

If you take a look at that, and they have been working them to make them more workable all the time, what you will find is they put out requests for proposals to those who want to do job training and they have to do certain things before they are eligible for the dollars.

Not only do they have to place the students—it's called performance based contracts—in some way, and I grant you all of what I have seen does not in any way ensure that the way that it has been structured is the absolute way. But I think that is the general approach to dealing with how you pay people for what they do or do not pay them for what they do not do. So you may start there.

Mr. ROEMER. But, Maxine, where would you set those bench marks? I mean, what kind of graduation rate would it be? Would it be steeped? Would it eventually be introduced over a period of time?

Ms. **Waters**. Well, see, I don't know. But what you could do, you could start out with some very low rates. For example, if you have no requirements and you have 10 percent of the schools participating or something in that amount who graduate no one, make it 2 percent to start. Make it 1 percent. Make it 3 percent and you'd be doing better than what you're doing now.

I'm not suggesting that it would have to be 75 percent. Since we don't have any, let's start very low. Let's say 3 percent. I don't think that's unreasonable. If they can't graduate 3 or 4 percent, I mean, what are we talking about?

If we say job placement, since we have no bench marks now, let's start with something very low. Let's say 5 percent. Is that too much to ask? Two percent, 1 percent, anything. Let's show that we want to do something.

Mr. **Gordon**. Last Congress, or last session, this Congress made an arbitrary figure of saying if you have a 35 percent default rate or more over a 3 year period, then you won't be eligible for student loans, and in 1993 it goes down to 30 percent.

This was an arbitrary figure, but it was something that we tried. And I think that what you have to do is, Notre Dame is not at risk now because they probably have a couple percent default rate. If they had a 50 percent default rate, then I think that you would be taking a harder look at them.

And I think that you're going to have to use expertise from folks that know more than we do. And you're going to have to decide, again, and I think, as Maxine says, let's maybe err on the side of too high and have a higher default rate, have, like, the 35.

Make those standards less restrictive now and see what happens. And then start to pull them down if we need to. But somewhere you're going to have to draw the line even though some people are going to be hurt. You're still going to have to draw that line or you're going to have a worse problem.

Ms. **Waters**. Just look at it very carefully. And, again, take into consideration whether or not the institution is solely supported with student loans. When you have a mix, or you can require a mix. I understand the Veterans Administration does. There is some information that leads me to believe that they have rules that say—here, let's see.

Some institutions rely substantially, if not exclusively, on funds emanating from the Federal financial aid program to exist. These schools tend to be mills for the processing of grant or loan funds, rather than institutions which have appeal to a broader base of students than recipients of financial aid.

The Veterans Administration experienced similar problems with schools which were established principally to enjoy the fruits of VA sponsored educational benefits programs. The VA limits schools' eligibility to schools where no more than 85 percent of the students receive VA benefits.

Maybe we could propose a similar requirement. I have submitted all of these recommendations that have been put together by a number of people who have worked on this for many years. I would suggest you take a very close look at it.

Mr. **Roemer**. Again, Mr. Chairman, I would like to thank our colleagues for their great testimony today. Last year we requested the Secretary of Education to provide, or at least to look at and evaluate, the measures of graduation rates of these schools. Maybe we can, as a committee, encourage an expeditious review and they can get back to us with these measures and variables and bench marks in the not too distant future.

Can you do that, Mr. Chairman?

Mr. **Andrews**. [presiding] I can do anything, Mr. Roemer. I appreciate your deep respect and affection for the Chair.

Mr. **Roemer**. Mr. Chairman, could you come to my district, too?

Mr. **Andrews**. You want to win, don't you? Thank you very, very much, Maxine and Bart, for very informative and inspiring testimony this morning. We thank you for your time and effort.

We are privileged to have as our panel this morning. And I would ask each of the witnesses to step forward so we may begin: Elizabeth Imholz, who is Director of the Consumer and Employment Unit of the South Brooklyn Legal Services in Brooklyn, New York; Robert Atwell, President of the American Council on Education in Washington, DC; Stephen J. Blair, President of the National Association of Trade and Technical Schools in Washington, DC; Arthur Resso, Chairman of the Board of Directors of the Association of Accredited Cosmetology Schools in Falls Church, Virginia; Marc L. Brenner, President and Fiscal Financial Aid Director of the Ohio Auto Diesel Tech in Cleveland, Ohio; and Robert B. Knutson, Chairman and CEO of the Education and Management Corporation in Pittsburgh, Pennsylvania.

Ladies and gentlemen, your statements have been distributed to the members of the committee, and without objection they will be made part of the permanent record of the hearings in each case. We would invite you to, wherever possible, summarize so that we may get on with questions as quickly as we can.

We'll begin to my right, with Mr. Knutson. Welcome.

STATEMENTS OF ELIZABETH IMHOLZ, DIRECTOR, CONSUMER AND EMPLOYMENT UNIT OF THE SOUTH BROOKLYN LEGAL SERVICES, BROOKLYN, NEW YORK; ROBERT ATWELL, PRESIDENT, AMERICAN COUNCIL ON EDUCATION, WASHINGTON, DC; STEPHEN J. BLAIR, PRESIDENT, NATIONAL ASSOCIATION OF TRADE AND TECHNICAL SCHOOLS IN WASHINGTON, DC; ARTHUR RESSO, CHAIRMAN, BOARD OF DIRECTORS, ASSOCIATION OF ACCREDITED COSMETOLOGY SCHOOLS, FALLS CHURCH, VIRGINIA; MARC L. BRENNER, PRESIDENT, AND FISCAL FINANCIAL AID DIRECTOR, OHIO AUTO DIESEL TECH IN CLEVELAND, OHIO; AND, ROBERT B. KNUTSON, CHAIRMAN AND CEO, EDUCATION AND MANAGEMENT CORPORATION, PITTSBURGH, PENNSYLVANIA

Mr. **Knutson**. Thank you. I'm happy to be here this morning. As you indicated, I am Chairman and CEO of Education Management Corporation. Our employee owned company, as art institutes in major cities throughout the United States which offer a wide variety of associate and baccalaureate degree programs.

Our 13,000 students come from every State in the union and from 50 foreign countries. We have reciprocal credit transfer arrangements with a number of colleges and universities. And, in addition, our organization's post graduate activities have consulting affiliations with universities in various cities in the United States and in Europe.

I am sympathetic to the statement made by Mr. Ford earlier when he referred to his experience. And I would characterize the art institutes as professional schools. And I, for one, while I'm a graduate of the University of Michigan in studies in economics, have a great personal commitment to the view that there is dignity in all kinds of work. And I think we need to keep that in mind as we review these student aid programs.

And I think at the heart of these hearings is the question of the relationship between students and the Federal Government. I feel that we need to ask ourselves what should be the primary responsibilities of the Federal Government and the States and the accrediting agencies as they facilitate that relationship between students and the Federal Government.

And as some of my colleagues on this panel this morning know, we have strongly held views on that subject. And our organization is very active in the process of reauthorization of the Higher Education Act. We have networked among the various higher education associations.

We have prepared a document which you have and other members have that contains 85 specific recommendations for constructive change in the administration and delivery of student aid programs. And we're very pleased that a number of our proposals have been incorporated into the proposals that others in this panel will refer to this morning.

The main point that I would like to make this morning is that the present system, the triad of the States and the Department of Education and the accrediting agencies, can work. But the primary responsibilities of each member of the triad need to be defined and need to be integrated. And the members of the triad need to act as partners with full and open communication. And that is not happening today.

We believe that there needs to be minimum Federal standards, as has been indicated in the earlier panel. And we agree with that for State licensing. And we think the States should be primarily responsible for consumer protection, just as we feel that the U.S. Department of Education should be primarily responsible for ensuring that institutions have administrative and financial capability. And we feel that the accrediting agencies should be primarily responsible for ensuring academic quality.

But those primary responsibilities are interdependent. Some people will go further into other partner's areas, if you will. But in the document that you have in front of you and in our testimony, we have ticked off various points. And just to highlight briefly, the minimum Federal standards for State licensing, we think that is essential if we're going to ensure the importance of the State license as a prerequisite to Title IV eligibility.

And we feel that every institution in a State should meet the same standards of consumer protection. And we have recommended that there be funding provided under the Higher Education Act to assist those States that meet those minimum Federal standards in their State oversight responsibilities.

And we have also recommended that there be a single State official charged with coordinating the enforcement of State licensing requirements and regulations as it pertains to institutions that are in the higher education programs.

We also feel that there should be minimum Federal standards for the recognition of the regional and national accrediting bodies. And we believe that those minimum Federal standards should cause the accrediting agencies in the way they address the academic standards of their institutions to get into such areas, for example, as curriculum, as credentials of faculty, facilities and equipment, student services and the like.

We feel that the membership in accrediting agencies should be voluntary. And we believe that there should be a clear separation from a financial and administrative standpoint between the accrediting agency and any related professional association. We believe that the accrediting agencies themselves should be charged with oversight that goes beyond what might be taking place today, on-sight review in certain instances.

As to the Department of Education itself, as it carries out its primary responsibilities to ensure the financial and administrative capability of institutions that participate in Title IV funds, our basic premise there is fairly simplistic. And that is you can not expect what you don't inspect.

And as has been indicated in the previous panel, part of the problem today is that it has not been taking place. We have recommended that there be program reviews conducted by the Department of all participating institutions every 3 years and that there be recertification reviews every 5 years, that there be targeted reviews of certain institutions that meet indicators such as high default rates, withdrawal rates of students, high rates of faculty and staff turnover, such as concerns of financial stability or material findings by the accrediting bodies or by the States.

In other words, for the department to take a more activist role on that score. We think it's absolutely essential that the department develop an institutional data base. There is something like 8,000 institutions that participate in the Title IV programs today that are not talking with one another. And, of course, plainly, the members of the triad aren't communicating the way they need to.

Essentially, the department, if I could put it in a single sentence, needs to take responsibility for Title IV funds. It's vital with all of this, as I said a moment ago, that there be open communication among the triad partners of the States, the Federal Government and the accrediting agencies, so that the left hand knows what the right hand is doing. Because, clearly, these three bodies are interdependent.

And I'd like to just end with the statement that, in my view, and I think there are others on this panel and in this hearing today that would ascribe to the view that we truly have a superb, diversified higher education system in the United States of America. It is, in fact, the envy of the world. Sure, we have problems, and some of them are serious. But today, look at what we have. We have public and private institutions which offer education and training programs that are long, that are short, that are highly diversified, that have a wide range of outcomes, and, in fact, do address our Nation's human resource needs.

And I think we can establish the right standards, the right rules, the right gate keeping, the right enforcement, within the existing system. That can be done.

What I think is going to be a harder challenge, and if I can make one final pitch, and that is that unless we develop the political will to look at education as the Nation's number one priority and as the solution to our problems and as an investment with an enormous future return, until we do that we are really missing the boat because it is something that needs to happen. And with reauthorization, we have the opportunity to make a real difference in the future of our country. Thank you.

[The prepared statement of Robert B. Knutson follows:]

TESTIMONY OF ROBERT B. KNUTSON
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
EDUCATION MANAGEMENT CORPORATION

BEFORE THE HOUSE EDUCATION AND LABOR COMMITTEE
SUBCOMMITTEE ON POSTSECONDARY EDUCATION

PROGRAM INTEGRITY

MAY 21, 1991

Mr. Chairman and members of the Subcommittee on Postsecondary Education, I am Robert B. Knutson, Chairman and Chief Executive Officer of Education Management Corporation (EMC) of Pittsburgh, Pennsylvania. Our employee-owned company operates The Art Institutes of Atlanta, Dallas, Fort Lauderdale, Houston, Pittsburgh, Philadelphia, Seattle and The Colorado Institute of Art.

The Art Institutes International serve 13,000 students in associate and baccalaureate degree programs. Our students come from every state in the Union and from 50 foreign countries. We also provide postgraduate paralegal training to students through The National Center for Paralegal Training and its consulting affiliations with universities in the United States and Europe. Our primary mission is to develop human potential. Our 1,800 faculty and staff know that student success is everyone's job.

I appreciate the opportunity to present our recommendations for improving the program integrity of the Title IV student assistance programs.

The Title IV student aid programs were created under the Higher Education Act of 1965 to provide all qualified students with an equal opportunity to pursue a postsecondary education regardless of family financial means. Federal student aid programs have played a critical role in maintaining student access and freedom of choice in education. As we begin the process of reauthorization, the effectiveness and integrity of these programs will come under close scrutiny.

We believe that the basic principles of the existing programs should be retained and strengthened, as they have served millions of our students well. However, we share the view expressed by others that substantial reform is in order.

In our 85 recommendations for reauthorization, which we have already provided to the Subcommittee and are submitting today for the record, we have made a number of proposals related to the student aid programs. In addition, we have addressed the institutional eligibility and oversight responsibilities of the Triad: the states, the accrediting agencies and the U.S. Department of Education. We believe that the Triad system of oversight can and should work, but only if the primary responsibilities and the authority of each of the Triad partners are better defined and integrated. The Triad partners' responsibilities are interdependent; each partner must carry out its principal role fully in order to ensure individual and collective success.

The Triad system suffers from a lack of communication. For example, students have been hurt by school closings which might have been foreseen or even prevented if the Department, the states, or the accrediting agencies had exercised their responsibilities and informed the other Triad partners.

There is no minimum federal standard for state regulations and, as a result, regulations vary tremendously from state to state. Many states simply do not allocate the necessary resources to properly oversee their institutions or to address serious problems when they occur.

The regional and national accrediting agencies have developed a reputation for behaving like private clubs that protect their membership. This perceived conflict of interest seriously threatens the integrity of the accrediting process. Accrediting agencies are increasingly driven by crisis management, in part because they have assumed responsibilities, e.g. student loan default prevention, which they are ill equipped to handle.

Due to staff reductions in the 1980s, the Department of Education does not have enough trained personnel with the necessary expertise to oversee the approximately 8,000 institutions that participate in Title IV programs. The Department possesses a great deal of information about eligible institutions, but has not consolidated it into a usable data base. As a result, it cannot identify schools which are experiencing administrative or financial difficulties.

The Department of Education's eligibility and certification processes are inefficient and overly dependent on paper processing. In the past ten years, institutions have installed sophisticated data processing systems. Collectively, they keep track of hundreds of thousands of students' detailed financial records related to their participation in the Title IV programs. It is unbelievable that the Department of Education has not been able to consolidate information on 8,000 participating institutions.

In order to strengthen the integrity of the Title IV programs, we propose the following:

- Establish minimum federal standards for state licensing.
- In order to assist states in their oversight responsibility, create a new authorization under the Higher Education Act to provide federal funds to states that meet minimum federal standards for state licensing.
- Amend the Higher Education Act to include federal statutory standards for the Secretary's recognition of regional and national accrediting agencies, in order to assure the integrity of the accrediting process.
- Replace the National Advisory Committee on Accreditation and Institutional Eligibility with a National Advisory Committee on Institutional Quality and Integrity, which is representative of all types of institutions within higher education.
- Require each member of the Triad to share information regarding all final decisions and the final results of any site visits (with institutions' comments attached) with every other Triad member.

- Require the U.S. Department of Education to establish a central data base of institutional information.
- Cause the Department of Education to reform its eligibility and certification process.

- Establish a single definition of "institution of higher education." The purpose of the Title IV programs is to support needy students in their pursuit of a postsecondary education, regardless of the governance of the institution or fine distinctions in program objectives.

Our recommendations are designed to reinforce, rather than expand, the traditional roles of the Triad.

- The principal responsibility of the states should be to assure that consumers are protected.

- The principal responsibility of the accrediting agencies should be to assure the effectiveness and high quality of the education programs their schools offer.

- The principal responsibility of the U.S. Department of Education should be to assure that participating institutions meet necessary administrative and financial standards.

As each of the partners in the Triad carries out its principal role, it is vital that they communicate with one another.

We have an enormous opportunity as we approach reauthorization of the Higher Education Act. We need to make the system work for our students and, consequently, for our country. With this Committee's leadership, I am confident we will succeed.

Mr. **Andrews**. Thank you, Mr. Knutson. I'm informed that Mr. Atwell has an early plane to catch so we're going to go out of order and ask Mr. Atwell if he would testify next. Welcome.

Mr. **Atwell**. Thank you, Mr. Chairman, and with apologies to my fellow panelists. And after I make my few brief remarks I hope you will feel no disrespect if I have to leave. And I'd be pleased to answer any written questions.

The testimony I offer today is on behalf of the American Council on Education and 11 other higher education associations, and is accompanied by specific legislative proposals. I would ask that my previously submitted written testimony be made a part of these proceedings.

Federal student aid programs have come under severe fire in recent years because of the circumstances which you've heard discussed earlier in this hearing. Now, fortunately, steps taken already by the Congress and the relevant accrediting bodies have started us on the road to reform.

The high costs associated with fraud and abuse and defaults are one of the reasons for the growing imbalance between grants and loans in student aid packages. And, in particular, high default costs have restrained the ability of the Congress to provide sufficient Pell and other grant funds to meet the demonstrated needs of students.

Our system of higher education, generally recognized as the best in the world, is also unique in the world in a number of respects. And for purposes of today's hearing, one of the most unique features of that system is that the monitoring of educational quality is assigned to what Mr. Knutson referred to as the triad consisting of State licensure and regulation of the institutions providing the education; voluntary accreditation and Federal program eligibility determination; and oversight.

In most other nations, all of these oversight functions rest in central ministries of education. Now, our decentralized system has worked reasonably well in assuring minimum academic standards, but on the whole, it has not performed satisfactorily in assuring good management and reasonable standards of probity.

For one thing, State licensure and regulation has been most notably ineffective because of understaffing, the dispersal of responsibility among several agencies within some States, and the reluctance of many States to undertake activities which they believe to be a responsibility of the Federal Government.

Secondly, accreditation, while well-suited for the determination of minimum academic standards, is, on the whole, ill-equipped to deal with a host of management and probity issues which come with the rapid expansion of enrollment. And that's been made possible, of course, in part through the growth of the student aid system, which is largely Federal.

The Congress has determined that Federal program eligibility should be determined through an arrangement whereby the Federal Government recognizes and monitors the voluntary accrediting bodies, rather than making individual determinations of which institutions should be eligible for Federal programs.

While the decision to leave Federal program eligibility largely in the hands of voluntary accrediting bodies is consistent with our whole approach to the role of the Federal Government, there have been difficulties. Chief among them being the fact that the Department of Education's role, both in overseeing accrediting bodies and in monitoring institutional performance with Federal funds, has suffered from inadequate funding and management inattention.

And our specific proposals address all three legs of the triad. And they do so against a background of what the Congress has already done to address the problems I've tried to identify. I would refer, specifically, to the prohibition on borrowing by students at high default institutions and reduced SLS limits for students in programs of less than 1 year.

In the area of State licensure and regulation, we recommend that the Secretary of Education be authorized to develop standards for State laws and policies which provide a more adequate system of State licensure, oversight and compliance. And these standards should be developed in cooperation with the State higher education executive officers and the States.

With respect to accrediting bodies, the Secretary would be required to develop specific standards for recognizing accrediting bodies for the purpose of institutional eligibility for Title IV programs, and we have indicated what some of those standards might be.

Thirdly, we have a number of proposals to clarify and strengthen the role of the Department of Education in student aid programs, including adequate staffing, performance standards for institutions and others.

It is my personal hope that in developing performance standards, and you heard reference to performance standards earlier in this hearing, special attention would be paid to such factors as high default costs, high default rates, the proportion of Federal or federally guaranteed funds to total institutional income, changes in institutional ownership, proportion of ability to benefit students, material findings in audit reports and others.

It is my judgment that thresholds could be established whereby poor performance on several of these indicators would trigger closer scrutiny than would be the case for other institutions.

In arguing for these threshold indicators, I'm fully aware that institutions serving academically high risk students should be expected to have higher default rates. But I do believe that institutional accountability would be strengthened through such standards.

And, finally, we have some proposals on regulatory reform, chief among them being to extend to the Higher Education Act the same negotiated rulemaking authority provided for the Perkins Vocational Act last year.

Our proposals are designed to assure that regulations are developed in cooperation with the higher education community. And in summary, we believe that the combination of the proposals we are offering will provide better accountability, greater integrity and lesser costs than would be the case in the absence of these measure. And in that manner, we will better serve our students, which is the purpose behind all of our activities.

Thank you, Mr. Chairman. And I would like to be excused, if I may.

[The prepared statement of Robert Atwell follows:]

STATEMENT

to the

SUBCOMMITTEE ON POSTSECONDARY EDUCATION

COMMITTEE ON EDUCATION AND LABOR

UNITED STATES HOUSE OF REPRESENTATIVES

May 21, 1991

by

Robert H. Atwell
President, American Council on Education

On behalf of:

American Association of Community and Junior Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Catholic Colleges and Universities
Association of Urban Universities
Council of Independent Colleges
National Association for Equal Opportunity in Higher Education
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Assn. of Schools and Colleges of the United Methodist Church
National Association of State Universities and Land-Grant Colleges

Mr. Chairman and Members of the Subcommittee:

On behalf of associations representing all sectors of American higher education, I appreciate this opportunity to present our recommendations to improve the administration and enhance the integrity of federal student aid programs.

To strengthen program integrity, two important issues must be dealt with during the reauthorization of the Higher Education Act:

(1) Serious problems persist in the administration of the programs by the Education Department, and in the Department's shared responsibility with the states and private voluntary accrediting agencies for determining institutional eligibility for participation in federal student assistance.

Lax administration of Title IV programs which annually distribute some $20 billion in student assistance has led to widely-reported instances of fraud and abuse, particularly in short-term occupational programs which enroll a high proportion of low-income, high-risk students. Such instances have eroded public confidence in the programs, although most institutions do a responsible job of managing federal funds.

(2) Increasing statutory and regulatory requirements imposed on the programs to deal with management problems at a relatively small number of schools has created a costly regulatory overburden for the majority of institutions.

To address the first issue, we believe it is vital to clarify the role and responsibilities of the Department, postsecondary institutions, the accrediting agencies, and the states in determining eligibility for federal student aid programs, and to strengthen institutional management controls and accountability. The second issue requires several steps to reform the regulatory process.

A. Clarifying the Responsibilities of the Education Department

We are encouraged that Secretary Alexander has moved quickly to adopt a sweeping management improvement plan to refocus and restructure the Department's student aid programs. The plan is based on the report of an ED-OMB review team which found the management capacity of the Office of Postsecondary Education to be inadequate, understaffed, and lacking the basic accounting records required to fulfill its responsibilities.

To make sure the Department provides adequate staffing of the student aid programs in the future, we recommend that a line item be established in its Salaries and Expenses budget for administration of Title IV programs. This would make the staffing needs for proper administration of the programs (including training of financial aid administrators) a matter for formal review in each budget cycle.

We recommend that the Department be required to develop, in consultation with the postsecondary community, objective performance standards for the administration and management of Title IV programs. Such standards would enable the Department to regulate differentially on the basis of such factors as the institution's mission, program, type of governance, and administrative capacity, and would include reliable criteria for identifying institutions which are having difficulties in operating and managing the programs.

We also recommend that the Department be required to establish a systematic program for oversight of all institutions participating in Title IV programs, including periodic recertification reviews. Based on these oversight activities, the Department should prepare and distribute an annual report evaluating the nature and extent of administrative and regulatory problems and concerns identified in the programs, and their frequency by sector.

The Department should also be required to establish a central data base of institutional information, to promote uniform reporting and full integration of all data available from sources within and outside the Department, including the Eligibility and Certification Division, the Audit and Program Review Division, the Financial Management Section, the Office of the Inspector General, the regional offices, the Veterans Administration, state agencies, and regional and national accrediting agencies.

In addition, the Department should be authorized to regulate and monitor third-party servicers that assume contractual responsibility for administration of Title IV programs. Third-party servicers for institutions should be subject to control and audit requirements similar to those that apply to institutions. The Department should also be authorized to regulate third-party consultants on student aid matters, and to require satisfactory performance standards for consultants.

We also urge consideration of the Administration's proposal for authority to provide conditional certification for a one-year period to enable the Secretary to take timely action against institutions with no proven record of ability to administer federal funds.

B. Strengthening Institutional Accountability

In the last two years Congress has taken several steps to limit program abuse and to make institutions more accountable for their management of Title IV programs, including a prohibition on borrowing by students at high-default institutions (with appropriate waivers for institutions with special circumstances), reduced SLS loan limits for students in programs of less than an academic year, imposition of a 30-day delay in the disbursement of guaranteed loans, and restrictions on the eligibility of ability-to-benefit students.

We recommend several further steps to improve the accountability of all institutions:

As a prerequisite to certification or recertification, institutions should be required to submit to the Education Department audited financial statements certified by an independent public accountant for their two most recent fiscal years. Institutions identified in the certification process as having actual or potential management and/or financial problems should be required to provide interim reports as a follow-up to certification.

All institutions should be required to provide the Department with detailed information on revenues and expenditures for inclusion in the Integrated Postsecondary Education Data System (IPEDS, administered by NCES).

In addition, institutions accredited by two or more agencies should be required to identify which one provides accreditation for the purposes of Title IV eligibility, provide the Department and their accrediting agencies with full disclosure of the reasons for their multiple accreditation, and notify the Department when one of their sources of accreditation is dropped or withdrawn.

We also support several recommendations included in the Administration's reauthorization proposals transmitted to Congress April 30, including:

Establishment of a minimum program length requirement of six months (equivalent of 600 hours) as a condition of eligibility for any of the GSL programs, consistent with the minimum-length standard of other federal student aid programs. Programs of less than 600 hours typically provide training for entry-level, minimum-wage jobs, and needy students should not be permited to assume large debts for such training.

Institutions should be prohibited from paying any commission, bonus, or other incentive payment based directly or indirectly on enrolling students or on student aid volume to persons engaged in making final admissions or financial aid eligibility determinations, or recruitment of prospective students by third party agents or contractors.

Institutions should be required to acknowledge, by the terms of their Title IV program participation agreements, that the Secretary, accrediting agencies, guarantee agencies, and state licensing agencies have the right to share information relevant to an institution's Title IV eligibility.

C. Improving State Licensure Standards

A recent study by the State Higher Education Executive Officers (SHEEO) found that the states are highly inconsistent and often too weak in their licensing standards for postsecondary institutions to assure reasonable standards of educational quality and consumer protection. SHEEO is currently working on the development of standards for state licensing.

We believe the time is right to accelerate this process through federal leadership. We recommend that the Secretary be authorized to develop, in consultation with SHEEO and other appropriate state agencies, standards which assure that state laws and policies provide an adequate basis for the licensure of postsecondary institutions, including the capacity for oversight, investigation, and determination of institutional compliance.

We also recommend that states be required to report to the Education Department and regional or national accrediting bodies any negative action affecting the license of an institution to operate, including denial, suspension, or termination of authority, and the final results of any on-site review of the institution.

D. Strengthening Accrediting Bodies

Federal law forbids the Secretary or any officer of the Education Department from "exercising any direction, supervision, or control over... any accrediting agency or association." This is an important safeguard for the private, voluntary system of accreditation by which the world of higher education attempts to assure the quality of its institutions. Nevertheless it is entirely appropriate for the Secretary to establish criteria by which accrediting associations may be recognized for purposes of determining institutional eligibility for federal student aid.

We recommend that the Secretary develop specific standards for recognizing accrediting agencies for the purpose of institutional Title IV eligibility. An agency should be required to demonstrate that it has the ability and experience to operate as an accrediting body, that its principal purpose is the accreditation of postsecondary institutions and/or programs, that it maintains a clear distinction from any professional or trade organization, that it determines that the program length is appropriate to the subject matter taught, and otherwise assures that the institutions it accredits provide satisfactory education and training, including the provision of adequate student support services where appropriate. Agencies should also be required to report any final negative action affecting the accreditation of an institution.

We also recommend that the Secretary's National Advisory Committee on Accreditation and Institutional Eligibility be strengthened by the addition of representatives of public and independent four-year institutions, community colleges, proprietary institutions, professional schools, public members, parents and students, and representatives of the Council on Postsecondary Accreditation. The Committee should be re-named the National Advisory Committee on Institutional Quality and Integrity, with responsibility to advise the Secretary on standards of recognition and to recommend changes in policies affecting institutional eligibility and certification.

E. Regulatory Reform

For the past decade the Department has consistently failed to consult with the higher education community as it developed regulations in difficult problem areas. As a result, regulations published for comment in the Federal Register often propose unrealistic and unworkable solutions which take the community by surprise, create an uproar of controversy, and require the intervention of Congress to resolve.

We urge extension to the Higher Education Act of the negotiated rulemaking authority provided for the Perkins Vocational Education Act last year. This would require the Secretary to establish a negotiated rulemaking committee representing affected sectors of the community whenever it is in the public interest to attempt to reach consensus on a proposed rule before it is published for comment in the Register. Such consultation in advance with the higher education community with respect to regulatory matters that affect it would permit the sharing of information and expertise on the nature of the problem, and the impact of various options for remedial action, before Departmental policy is determined, rather than after the fact.

Our earlier recommendation that the Department be required to develop performance-based standards for the administration of Title IV programs would also provide an important step toward regulatory reform. For example, problems that have been identified in short-term, skill training programs have resulted in the imposition of inappropriate, costly, and burdensome regulations on two-year and four-year degree-granting institutions. Establishment of performance-based standards could result in specific and more effective regulations for sectors of postsecondary education with different missions and goals; it could also provide criteria for waiving regulatory requirements for institutions which meet high performance standards or valid alternative standards. The Department would no longer be in the position of penalizing all institutions to stop a small minority from abusing the system.

Finally, we believe that the Department should be encouraged to seek new ways to reduce the regulatory burden on institutions. Therefore, we recommend that the Secretary be authorized to make demonstration grants to postsecondary institutions to develop innovative approaches that would improve the administration of Title IV programs and reduce their regulatory burden.

Mr. **Andrews**. Mr. Atwell, thank you very much for your patience and your testimony. We will now hear from Mr. Brenner.

Mr. **Brenner**. Thank you. We have provided you with a full length copy of our position paper. Mr. Chairman, members of the subcommittee, my name is Marc Brenner, President and Fiscal Financial Aid Director of Ohio Auto Diesel Technical Institute, a 22-year-old proprietary school located in Cleveland, Ohio.

Currently, I also chair the Reauthorization Task Force of the National Association of Student Financial Aid Administrators. It is indeed a pleasure to have the opportunity to appear before you today to express the views of NASFAA and its nearly 3,300 members on changes that we believe must be made to help ensure the integrity of the Federal student aid programs.

We are aware that there are people that perceive the Federal student aid programs as wasteful, extravagant and fraudulent. NASFAA does acknowledge that some of this criticism is valid and justified. But much of the condemnation is unfair and does not accurately portray the value such assistance provides to students and their families.

And we are all aware of the abuses that have been publicized in the press. While some of these reports were either overstated, misinterpreted or isolated incidents, the fact remains that these occurrences can not simply be ignored, nor can we continue to delay constructive actions to reduce or prohibit such incidents in the future.

Singularly, perhaps none of these incidents would necessarily create a major cause for criticism of overall educational operations; however, taken collectively, the occurrences have cast a negative shadow on our industry and, more specifically, the Federal student aid programs.

What I want to emphasize is that the majority of postsecondary institutions are credible, reputable, and they deliver the education and training that they promise in meeting the needs of their students.

NASFAA recognizes that much needs to be done to ensure the integrity of the programs. And Congress and the administration have already accomplished much since the last reauthorization to enhance program management, to prevent fraud, waste, abuse, and to reduce student loan defaults.

Every member should be aware that the steps that they have already taken to reduce student loan defaults are, in fact, working. And more recent changes need time, they need a chance to actually begin to work.

The mind set that too many borrowers once had that they could default on their loan obligations without consequence is disappearing. People are getting the message.

Let me stress that the majority of students are not defaulters. The fact is that in the history of the program, billions of dollars have been lent, and millions of loans are being repaid at the current time. These loans represent aspirations fulfilled, career goals achieved and studies completed with degrees awarded.

As professionals who are more directly involved and responsible for the administration of Federal student aid than anyone else, we understand the complexities involved in the system and the opportunities for some to take advantage of a system designed to work for educational opportunity.

In the past, some have joked that financial aid administrators act like Federal program money is their own. Well, we do seriously take the stewardship and the accountability responsibilities that Congress has entrusted to us in order to carry out the goals of the Title IV programs.

As members of Congress serving on this subcommittee, we know you have to justify the Title IV programs to other members and to your constituents. We appreciate your support in defense of the student aid in the past, just as we look forward to working with you now to help ensure the integrity of and restore public confidence in the student assistance programs.

Nothing you can do will be more important to both the long term and short term success of the student aid programs than what you're doing now. We firmly believe that there can be no improvements or increases in aid to the neediest students or to middle class families or to others without Congress directly addressing the issue of program integrity.

NASFAA has approached the issue of program integrity from several different perspectives. In the written statement that I've provided, I've gone into much more detail, but let me summarize a few of our recommendations now.

To help reduce defaults, NASFAA strongly urges the Congress to change the funding structure of the Pell grant program by creating an entitlement for students, rather than maintaining the current discretionary appropriation system. Failure of the appropriations committees to follow the policy decisions of the authorizing committees has necessitated more borrowing and has contributed, we believe significantly, to the default problem.

We've suggested establishment of reduced annual loan limits for three-quarter and half-time students. Further, we recommend that institutions be allowed to establish lower loan limits than those previously described in statutes. These changes will prohibit excess borrowing, and thus, lower the default rates.

NASFAA further recommends extending the current 10 year repayment period to 15 years, keeping monthly payments affordable to help prevent defaults.

Another major initiative under the category of program integrity endeavors to set up systems of checks and balances to allow the Department of Education and institution to monitor and manage the programs better, and to limit student and institutional participation in the programs where appropriate.

NASFAA recommends the creation of a statutorily based self-regulatory quality assurance program based primarily on the successful institutional quality control pilot project currently in place.

NASFAA recommends the use of performance criteria, not only in limiting eligibility for participation and student aid programs, but also as a means of encouraging good performance by institutions and others. NASFAA feels strongly that although sanctions and additional procedures are necessary for certain institutions, there are many whose ability to successfully manage the program is impeded by excess regulations, sanctions and procedures.

NASFAA also supports the concept of negotiated rule making that has been advanced by other higher education associations.

In conclusion, Congress should carefully examine the root causes of the problems and design sensible, sensitive and effective solutions.

A proper solution to an integrity problem in student aid should have the following characteristics: it should identify, isolate, and be germane and proportionate to the problem.

At my school, we teach new students to use the proper diagnostic equipment and the correct parts to repair an engine that is not working. An incorrect valve part of a missed diagnosis of an engine, just as an incorrect student aid legislative solution, will not solve the problem, and, in fact, would lead to greater and unanticipated problems.

The Congress must also do the same and not try to force a solution which will cause even greater complications or system breakdowns, or, in fact, hurt students.

NASFAA looks forward to working with the subcommittee to ensure not only appropriate program standards, but also to restore public confidence in these important and essential financial aid programs. I would be pleased to answer any questions that you may have, and I thank you for the opportunity.

[The prepared statement of Marc L. Brenner follows:]

STATEMENT OF
THE NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

BEFORE THE HOUSE SUBCOMMITTEE ON POSTSECONDARY EDUCATION

PRESENTED BY
MARC BRENNER, CHAIR
NASFAA REAUTHORIZATION TASK FORCE

May 21, 1991

Mr. Chairman and Members of the Subcommittee, my name is Marc Brenner, President and Fiscal Financial Aid Director of Ohio Auto Diesel Technical Institute, a twenty-two year old proprietary school located in Cleveland, Ohio. Currently, I chair the Reauthorization Task Force of the National Association of Student Financial Aid Administrators (NASFAA). It is indeed a pleasure to have the opportunity to appear before you today to express the views of NASFAA and its nearly 3,300 members on changes that we believe must be made to help ensure the integrity of the federal student aid programs.

We are aware that there are people that perceive the federal student aid programs as wasteful, extravagant, and fraudulent. NASFAA acknowledges that some of this criticism is valid and justified. But, much of the condemnation is unfair and does not accurately portray the value such assistance provides to students and their families.

NASFAA recognizes that much needs to be done to ensure the integrity of the programs, but we also must remember that the Congress and Administration have done much in the last Reauthorization and since to enhance program management, prevent fraud, waste, and abuse, and reduce student loan defaults. We should review these changes, improvements and reforms.

For example, among those changes are reporting of borrowers in default to national consumer credit bureaus, using private collection agencies, Justice Department law suits, garnishment of wages, co-payable checks to the student and institution and multiple disbursements of loans, 30-day delayed disbursement, universal need analysis to determine eligibility for loans, IRS tax offset of refunds, authority for aid administrators to reduce or deny a loan, tightening up on SLS eligibility, and cut-offs of eligibility for loans at schools with high default rates. We understand why the Congress made these modifications to the Higher Education Act. However, some of these changes, well-meant without question, have caused real hardships for millions of students that are not part of the problem these revisions intend to correct. NASFAA has worked with the Congress to help reduce student loan defaults and increase program integrity just as we have supported actions of the Department of Education, such as requiring reporting of a driver's license or next-of-kin information to better track borrowers, to increase accountability and promote better program management.

I want to address the topic of student loan defaults which is one important area when considering program integrity. We are aware that there are people that perceive the federal student aid programs as wasteful, extravagant, and fraudulent. NASFAA acknowledges that some of this criticism is valid and justified. But, much of the condemnation is unfair and does not accurately portray the value such assistance provides to students and their families. And, we all are aware of the abuses that have been publicized in the press. While some of these reports were either overstated, misinterpreted, or isolated incidents, the fact remains that the occurrences cannot simply be ignored, nor can we continue to delay constructive actions to reduce or prohibit such incidents in the future. Singularly, perhaps none of these incidents would necessarily create a major cause for criticism of overall educational operations. However, taken collectively, the occurrences have cast a negative shadow on our industry and more specifically, the federal student aid programs. But, what I want to emphasize is that the majority of postsecondary institutions are credible, reputable, and deliver education and training meeting the needs of their students.

Every Member should be aware that the steps already taken to reduce student loan defaults are working and more recent changes need to be given a chance to work. The mindset that too many borrowers once had that they could default on their loan obligations without consequence is disappearing. Student borrowers now know that their credit ratings will be affected by a loan default, that their federal income tax refunds can be withheld to pay for a defaulted loan, and that they face not only efforts to collect their debts by collection agencies, but that the Justice Department will prosecute them.

There are cases in which individuals have gone to closing on the purchase of a home and a student loan default on the records has prevented them from obtaining a loan for that home. U.S. Attorneys in Philadelphia have seized the automobiles of a handful of professionals who refused to acknowledge their college loan debts. Imagine yourself in the position of these individuals who have defaulted and, subsequently, find that they cannot close on their new homes, that their car is not in the driveway one evening, or that the tax refund they were expecting will never be issued. These measures are harsh, but for those who blatantly abuse the government-backed student loan system, these remedies are necessary and appropriate. People are getting the message.

However, let me stress that most students are not defaulters and most do repay their loans promptly and fully. Many of the individuals who do default typically are non-high school graduates who have not completed their program of postsecondary education, are underemployed or unemployed, or are single-parent head-of-households who do not have the income to repay. For many of these individuals, a student loan default creates additional hardships in their already difficult personal circumstances. And, let us not forget that the student loan default problem did not appear overnight and that a prime reason the situation became so serious is that the Department of Education for so many years for whatever reason, i.e. lack of attention to the problem, absence of leadership, or inadequate resources, did not conduct the proper oversight and management of the student loan programs as was required. NASFAA is cautiously optimistic that the recent student financial aid management changes announced by Secretary Alexander will result in these crucial programs finally getting the attention and proper management that they deserve.

It is important to note that one reason default costs to the government have risen is that more students are borrowing greater amounts. Cumulative loan volume has grown from $21.2 billion in 1980 to $101.6 billion in 1989. One consequence of this growth is an increase in default claims paid by the government, even though the rate of default has remained fairly stable, i.e. 10.1 percent in FY-80 to 9.2 percent in FY-89.

We need, however, to step back from the problems in the loan programs to remember that the federal student financial assistance programs are working and are working well. Over 10,000 lenders participate in the loan programs. Approximately 4.7 million student loans are made a year providing $12.4 billion in loan funds for postsecondary education. The average undergraduate loan is $2,425 and the average graduate loan is $5,747 as estimated by the Department of Education in FY-92.

These are impressive figures, but I believe even more impressive is the educational opportunity provided to those individuals who receive student loans. The fact is that in the history of the program, billions of dollars in loans have been made and millions of loans are being repaid or have been repaid. These loans represent aspirations fulfilled, career goals achieved, and studies completed with degrees awarded.

Federal student loan programs have no international comparison and our nation is richer for them. Even with news of the problems in American education, student loans have contributed in providing us with an educated citizenry that contributes to our economic competitiveness, national defense, research and development agenda, health care system and so many other aspects of our national life and well-being.

As professionals who are more directly involved and responsible for the administration of federal student aid than anyone else at American postsecondary institutions, we realize the complexities involved in the system and the opportunities for some to take advantage of a system designed to work for educational opportunity. Student financial aid administrators know first-hand what is necessary to implement the will of Congress as expressed through the Higher Education Act. What procedures and management techniques will ensure that the law is carried out and that Department of Education regulations are executed properly. What steps must be taken to ensure that the federal appropriations entrusted to us are not only well-spent to promote access to a postsecondary education for our students, but also are accountable to the taxpayer. In the past, some have joked that financial aid administrators act like the federal program money is their own. We do take seriously the stewardship and accountability responsibilities that Congress has entrusted to us as a profession in order to carry out the goals of the Title IV programs.

As Members of Congress serving on this Subcommittee, we know you have had to justify the Title IV programs to other Members and to your constituents. We appreciate your support and defense of student aid in the past just as we look forward to working with you now to help ensure the integrity of and public confidence in the student assistance programs. Nothing you can do will be more important to both the long-term and short-term success of the student aid programs than this. We firmly believe there can be no improvements or increases in aid to the neediest students or to middle-income families or to others without the Congress directly addressing the issue of program integrity.

In this spirit, NASFAA makes the following recommendations to assist in ensuring program integrity and public confidence in the Title IV programs:

NASFAA has approached the issue of program integrity from three different perspectives.

First, NASFAA does recognize that curbing the incidence of student loan defaults is of utmost importance during this reauthorization. As I have discussed, Congress and the Department of Education have already done much to avert loan defaults--and many of these actions still need time to show results. NASFAA, however, recommends the following additional changes to protect valuable federal funds in the student loan programs and, equally as important, to safeguard students from the negative consequences of having a default on their credit record.

(1) NASFAA strongly urges the Congress to change the funding structure of the Pell Grant Program by creating an entitlement for students rather than maintaining the current discretionary appropriation system.

Since the Pell Grant Program's first authorization in FY 1973, the Appropriations committees have funded the program at its authorized maximum only three times--most recently in FY 1979. In every other year, the program maximum has been below the policy levels set by the authorizing committees. Failure of the Appropriations committees to follow the policy decisions of the authorizing committees has necessitated more borrowing on the part of needy students and has contributed--we believe significantly--to the default problem.

(2) In conjunction with our recommended increased loan limits for the Guaranteed Student Loan Programs, NASFAA's recommendations would also establish reduced annual loan limits for three-quarter and half-time students. In addition, NASFAA recommends that institutions be allowed to establish lower institutional loan limits than those prescribed in statute. We feel that these changes are necessary to prevent excess borrowing and the potential for default. I would also note that as a result of last year's Reconciliation Act, financial aid administrators currently have the authority to deny or reduce the amount of a student's loan in certain circumstances. NASFAA supported this provision and believes that it will be a useful tool for institutions to use in default prevention.

(3) Also related to our recommended increased loan limits, NASFAA suggests extending the current 10 year repayment period to 15 years to accommodate borrowers who take advantage of these increased loan limits. NASFAA believes that this increase is necessary to assure that student

borrowers will be able to afford the higher monthly loan payments associated with such increased borrowing. Keeping monthly repayments affordable for borrowers will keep incidence of default at a minimum.

(4) NASFAA also has recommended substantial increases in PLUS loan limits for parents, but with several additional safeguards to prevent abuse and the potential for default. NASFAA believes that such increased limits are appropriate provided that credit checks are conducted, that funds are either electronically transferred to the institution or checks are made co-payable to the institution and the parent borrower, and that PLUS loan funds are multiply disbursed.

(5) NASFAA recommends limiting eligibility for the Supplemental Loans for Students (SLS) Program to graduate/professional students with undergraduate eligibility established through professional judgment only. NASFAA believes that SLS loans have been utilized too frequently by some undergraduate students and should be used only as a last resort for these borrowers. Although NASFAA believes that much of the "inappropriate" usage has already been curbed by legislative means, we make this recommendation as an additional safeguard.

(6) NASFAA recommends that the current requirement that a student be enrolled on at least a half-time basis to be eligible for Part B loans be continued. We note that, in some cases, a student would not enter repayment for excessively long periods of time if such loans were deferred for students enrolled less than half-time. While NASFAA is sensitive to the needs of those students who cannot enroll in postsecondary education on at least a half-time basis, we feel that allowing these students to borrow does not serve them well and may contribute to default costs.

(7) NASFAA recommends a consolidation of the deferment provisions for student loans into three categories. We believe that simplification of the deferment process will help curb "technical

defaults,'' referring--in most instances--to students who go into default despite their good faith efforts to understand the deferment categories and obtain a deferment. Along these lines, NASFAA also suggests rescinding the current requirement that a student enrolled on a half-time basis must borrow again in order to obtain a deferment. Consistent with the NASFAA's broad policy goal of reducing reliance on loans, we believe it makes no sense to require a student to borrow another loan in order to receive a deferment on a previously borrowed loan, provided the student is enrolled at the appropriate level.

In addition, NASFAA recommends allowing deferments for an individual attending an institution eligible for Title IV aid but which does not participate in the Part B programs. NASFAA believes that an individual student should receive a deferment if that student's institution participates in any Title IV student assistance program, even though the institution may not participate in the Stafford Loan Program.

(8) NASFAA recommends that the seller of a loan be required to notify students that their loan has been sold. Lack of direct information to students regarding sale of their loans is a contributing factor to default, and NASFAA believes that, although some lenders currently notify students of such sales, that such notification should be required in statute.

NASFAA's second major initiative under the category of program integrity endeavors to set up systems of ''checks and balances'' to allow the Department of Education and institutions to monitor and manage the programs better and to limit student and institutional participation in the programs where appropriate. Among our recommendations in this area are the following:

(1) NASFAA recommends the creation of a statutorily-based, self-regulatory Quality Assurance Program, based primarily on the successful Institutional Quality Control Pilot Project. NASFAA

sees great promise in the Institutional Quality Control Pilot Project and recommends the suggested parameters governing participation and removal from the program.

(2) NASFAA recommends the use of "performance criteria" not only in limiting eligibility for participation in the student aid programs, but also as a means of encouraging good performance by institutions and others. NASFAA feels strongly that although sanctions and additional procedures are necessary for certain institutions, there are many--so-called "good performers"-- whose ability to successfully manage the programs is impeded by excess regulation, sanctions, and procedures. We believe that allowing and encouraging institutions to implement successful procedures without additional statutory or regulatory intervention will markedly improve overall performance.

(3) NASFAA also supports the concept of negotiated rulemaking that has been advanced by other higher education associations. Clearly, the promulgation of constructive regulations in a timely manner is imperative to safeguard the integrity of the student aid programs. Unfortunately, even in the recent past, regulations implementing statute have not been issued until several years after enactment of a law and, in other cases, the implications of regulations that were issued were not well thought out by the Department. Negotiated rulemaking is a sensible reform in which all affected parties will have the opportunity early in the regulation development process to have input avoiding mistakes and misinterpretations that currently afflict the Department's system.

(4) In terms of limiting eligibility for the student aid programs as a "check and balance," NASFAA recommends limiting the maximum Pell Grant for an incarcerated student to the amount of tuition and fees the student is assessed for the course of study and an allowance for book/supplies. We also suggest eliminating incarcerated students from eligibility for GSL student loans. In conjunction with these recommendations, however, we recommend a study to determine the proper funding mechanism and source for incarcerated students. NASFAA believes that

rehabilitation of such persons is appropriate, however the source of funding to support such rehabilitation should be determined after further study.

(5) Also in this area, NASFAA also recommends adding the requirement for a two-semester residential component for a correspondence school to be eligible for Pell Grant Program funds. We also recommend establishing a 600 clock hour requirement for programs participating in the student aid programs. We believe these requirements are necessary to enhance the integrity of the program.

(6) As another example of this type of limitation, we recommend requiring that the number of students who are not high school graduates and who receive Title IV student assistance should be limited to not more than 50 percent of an institution's regular student headcount, and that pro-rata refunds should be required for such students.

(7) NASFAA recommends allowing institutions explicit authority to withhold services, such as academic transcripts, from borrowers who default on their student loans. In some instances, state laws may control the release of, or access to, an individual's academic records. NASFAA believes that federal authority to address this issue is desirable. Such authorization would clarify institutional authority to take action to reduce defaults.

(8) NASFAA suggests an increase in the penalties associated with the continuing problems of fraud and abuse. NASFAA believes that, in addition to reinforcing institutional administrative requirements and increasing funding for Education Department administrative monies to oversee the programs, it is also necessary to strengthen the Department's disciplinary authority through appropriate increases in the penalties associated with fraud or abuse.

The last area relating to student aid program that we address in our recommendations deals with building and promoting public support and confidence for the programs. As has been discussed many times before, taxpayer trust in the management and effectiveness of the student aid programs is essential if they are to be continued and expanded to help more and more American students. Among the NASFAA recommendations in this area are the following:

(1) We strongly encourage adoption of NASFAA's Plan for Reform, which was presented to this Subcommittee earlier this month, to ensure fairness in the student aid programs and to promote simplicity so that the process is understandable for all.

(2) NASFAA recommends establishing a set of actions in the Higher Education Act in the event of a guaranty agency insolvency to protect the integrity of the loan system and to ensure that loan capital would continue to be available to students. In July 1990, when the Higher Education Assistance Foundation declared bankruptcy, there was much concern among the lending community, other guaranty agencies, institutions of higher education, the media, and, most importantly, students and parents because specific procedures to address guaranty agency insolvency were not in place. Had the situation drifted into a ''panic'' due to lender uncertainty about the status of their outstanding and new loans, it is possible that lenders could have taken steps to minimize their exposure to risk or even suspended their participation in the GSL programs. If this had occurred, then further guaranty agencies may have found their agencies facing undue financial risk. Even more alarming, it is likely that students—especially low income borrowers or those enrolled in short-term programs—would have experienced access problems.

Our recommendation would require a study to determine the mechanisms and timelines for dealing with such insolvency if it should occur in the future. Until additional information is available, NASFAA recommends that, in the event of a guaranty agency failure, the Department would manage both the reserves of the agency and the reinsurance function.

(3) The current law mandates the distribution of Title IV source and amount information to all students, at least annually, and in a prescribed manner. NASFAA recognizes the importance of students knowing that their aid comes from the federal government. Such knowledge contributes to broad-based understanding and support for the programs that is necessary in these times of fiscal constraint. NASFAA believes that it is critical for student recipients to understand the source from which their assistance originates, and we believe this would be better accomplished by the addition of the word "federal" in each of the Title IV program names.

In conclusion, Congress should carefully examine the root causes of problems and design sensible and effective solutions. A proper solution to an integrity problem in student aid should have the following characteristics: it should identify, isolate, be germane, and proportionate to the problem. At my school, we teach students to use the proper diagnostic equipment and parts to repair an engine that is not working. An incorrect valve part or a misdiagnosis of an engine, just as an incorrect student aid legislative solution, will not solve a problem and may lead greater and unanticipated problems. The Congress must also do the same and not try to force a solution which will cause even greater complications or system breakdowns or hurt students.

As an example of what I mean, let me cite the requirement of a 30-day delayed disbursement for student loans. We suggest this requirement, now mandated for all institutions, should be targeted only on those schools with a default problem. This provision of the law hurts students trying to pay their tuition and fees, books and education supplies, rent and food bills. Referring to the delayed disbursement prerequisite, just last week the student witness before you, Annette Hines, said that "you must wait for your money but bills and bill collectors don't wait. My mother and I had to borrow money from friends and pawn our belongings because we have to live." This provision does not meet the criteria I just mentioned as a proper solution to an integrity problem. It should be corrected and other similar approaches should be avoided in the renewal of the Act.

NASFAA looks forward to working with the Subcommittee to ensure, not only appropriate program standards, but also to restore public confidence in these important and essential financial aid programs. I would be pleased to answer any questions you may have and thank you for the opportunity to testify.

Mr. **Andrews**. Mr. Brenner, thank you, and the questions will come after the panel has concluded. The bells that you hear, as you may know, indicate that we have a vote to go cast.

So this is a good time for me to ask for unanimous consent. It's pretty easy for me to get that at this point. I'm going to go vote and we are going to reconvene in ten minutes and resume the panel. We'll be right back, and thank you for your patience.

[Recess.]

Mr. **Andrews**. [presiding] Ladies and gentlemen, thank you for your patience, and we will reconvene. I'm going to ask if Ms. Imholz will testify next. We'll hear from her and then complete the panel.

Ms. Imholz, welcome.

Ms. **Imholz**. Thank you very much. Good morning. I'm the Consumer Law Coordinator for Legal Services for New York City, which is an office which provides free legal representation to low income persons. I'm here today to speak on behalf of proprietary trade school students who have been defrauded by promises of free training and high paying jobs; tricked into signing for loans they didn't need or want; shut out by school closings; disgusted by broken equipment and teachers who didn't show up for class often; and ultimately were sued or harassed, at least, for defaulted student loans that they could not afford to repay.

Each day I receive telephone calls from students, counsellors, lawyers and advocates from across the country about problems concerning for-profit vocational schools and related financial aid matters.

On the front lines, my colleagues and I are seeing a human tragedy of immense proportions. Nearly every client who walks through our door has had a proprietary trade school problem or has a friend or relative who is aggrieved.

The consequences they suffer are far reaching. Over $6,000 in defaulted student loans, loan collection law suits, ineligibility for student financial assistance, including grants, because of defaulted loans, negative credit ratings, loss of confidence in themselves and, significantly, loss of faith in the government system that allows funds to flow freely to fraudulent operations.

Indeed, an entire generation of trade school students, mostly minorities, will be turned into a permanent underclass with loans they will never be able to repay, foreclosed educational opportunities and, perhaps, permanent disenfranchisement from the work force unless this reauthorization process provides them with some relief.

The current statutory scheme has proved totally inadequate to prevent proprietary trade school abuse of Title IV programs. None of the reforms enacted in the past several years provide any relief for individual students. Thus, when a proprietary school which never should have been eligible for Title IV aid in the first instance defrauds a student or closes prematurely, the Department of Education simply blames the victim by harassing them to repay a loan.

The Senate Permanent Subcommittee on Investigation has concluded that the Education Department, "has all but abdicated its responsibility to the students it's supposed to serve." I certainly agree.

A telling example is its recent co-sponsorship with the National Association of Trade and Technical Schools, an accreditor, of a booklet on choosing a vocational school. In 1988, the department had issued a report cataloging the widespread consumer fraud problems in the propriety school industry. Yet, a year later, the department joined with NATTS in publishing this booklet, "Getting skilled, getting ahead," which is a promotion, basically, for proprietary trade schools over other vocational programs.

The booklet contains no admonition about U.S. Ed's own findings of deceptive practices and criminal activity at some schools, nor does it offer advice on how to avoid being entrapped by deceptive practices or excessive loan obligations.

It unequivocally states, in fact, that accreditation means a proprietary school truthfully advertises, admits only qualified students, charges reasonable fees, et cetera. The department knows better. Every school whose owners have been convicted, every school founder brought up on charges by the U.S. Education Department has been accredited, yet this booklet explicitly assures prospective students that accreditation guarantees quality.

Because of the inadequacy of the current statutory scheme and the stance of the Education Department, drastic legislative change is needed. The City of New York has proposed amendments to the Higher Education Act, as has Representative Waters, several of which deal with providing relief to individual students, as well as reforming the regulatory process for proprietary schools.

I strongly support these proposals, as does a coalition of student advocates across the country. And a copy of the city's proposals are both attached to my testimony and, I believe, in the House Committee Print. I discussed them in my written testimony, which I ask that you make a part of the record.

At South Brooklyn Legal Services, where I'm the Director of the Consumer Unit, our offices represented hundreds of trade school students in the past 4 years. We've brought class action suits against several for-profit trade schools, only to have the schools enter bankruptcy. I'm aware of law suits or similar problems in nearly every State.

So far, the frustrating results of our efforts are prolonged litigation against corporate shells with little or not assets, students who didn't receive training or jobs and are saddled with defaulted loans and barred from further educational opportunities, and taxpayers who must pick up the tab.

In 1987, we filed a law suit in Federal court against Adelphi Institute, its owners and officers. The suit alleges, among other things, that Adelphi was run not to provide education or training, but as a fraudulent scheme to obtain government funds in the form of grants and loans.

Just months before Adelphi had become licensed by New York State and accredited, its principle owner had been convicted of defrauding the Federal Government of manpower training funds. At its peak, Adelphi was a nationwide chain which enrolled thousands and thousands of students and received $120 million in State and Federal monies.

Two months after we filed the law suit, Adelphi filed for bankruptcy and closed its door as nationwide. In 1990, the principle owner pled guilty to unlawfully withholding student loan refunds, but the students still haven't gotten the refunds and remain obligated on those loans.

Adelphi failed to refund approximately $12 million in student loans. While the plaintiff class has been certified against the owners and operators of the school, the action has otherwise been stayed because of the bankruptcy filing.

Our office filed a second class action suit in February of 1988 in State court against another business school, Market Training Institute, raising similar claims. In August of 1989, in the midst of litigation, MTI also filed a bankruptcy petition.

As these two cases illustrate, there are limited benefits to students litigating within a fundamentally flawed system where the accrediting bodies and the U.S. Department of Education are often aligned with schools against student consumers' interests, and where school bankruptcy filings interfere with financial recovery for students.

The present regulatory scheme has developed standard and controls oriented toward regulating traditional nonprofit institutions of higher education. The system has failed to maintain minimal levels of quality for proprietary schools and, in fact, fosters school owner greed, profiteering and widespread fraudulent practices.

For example, in a criminal trial in New York, Leonard Houseman, the former owner of a computer school in New York who was convicted of theft of Federal funds, testified that prior to receiving Federal funds he drew a salary of $10,000 per year. One year after receiving accreditation, I believe by NATTS, and Federal Title IV funds, he inflated his salary to $700,000. Surely that wasn't what Title IV money was meant to finance.

Through litigation and school bankruptcy filings, we are finding countless examples, which Ms. Waters discussed today as well, of school owner fortunes, real estate empires, yachts, luxury cars, condominiums, bought with student Title IV assistance money, and built on the back of poor students who wanted nothing more than to better their lives and those of their children by getting quality training and a decent job.

The Senate Permanent Subcommittee on Investigations has confirmed that the vast majority of waste, fraud and abuse in Title IV programs has been perpetrated by profit driven proprietary schools.

One solution, in my opinion, is to acknowledge the differences between proprietary trade school businesses and other institutions of higher education and to regulate them separately by providing a different definition within the Higher Education Act for proprietary vocational schools.

This definition would be the foundation for a variety of other reforms which are enumerated in the City of New York's proposals—performance standards and pro rata refunds being two of those.

Most importantly—I'll just summarize quickly so my colleagues can finish—I would urge the subcommittee to provide some direct relief for proprietary trade school students in this reauthorization process. Prospective relief is certainly important. The reforms that are enumerated in the city's proposals, such as the pro rata refunds, we believe would make a substantial difference.

However, retroactive relief is also needed for those whose lives have already been devastated. These are students who have been defrauded or victimized by school closings and fraudulent activity.

We would ask that those students have their loans cancelled or, at least, stayed, and their eligibility for Pell grants reestablished to enable them to go on with their lives to get legitimate education and training so that they can, in fact, get back in the work force.

And thank you very much for this opportunity. I'll be glad to answer any questions.

[The prepared statement of Elizabeth Imholz follows:]

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON POSTSECONDARY EDUCATION

TESTIMONY OF ELIZABETH IMHOLZ, ESQ.
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21 MAY 1991

I am the Consumer Law Coordinator for Legal Services for New York City whose neighborhood offices provide free legal representation to low-income persons. Over the past four years, our offices have been deluged with thousands of complaints about proprietary trade schools: students defrauded by promises of free training and high paying jobs; tricked into signing for loans they did not necessarily need or want or understand; disgusted by broken equipment and teachers who do not teach or even show up for class; and, ultimately, sued or harassed because of defaulted loans.

Each day I receive telephone calls from students, counselors, lawyers and other advocates across the country about problems concerning for-profit vocational schools and related financial aid matters. On the front lines, my colleagues and I are seeing a human tragedy of immense proportions. Nearly every client who walks through our doors has either had a proprietary trade school problem herself or has a friend or relative who is aggrieved. And the consequences they suffer are far-reaching: as much as $6,625 in defaulted loans, threats of lawsuits, ineligibility for any future student financial aid including grants, negative credit ratings, loss of confidence in themselves, and loss of faith in the governmental system that allows funds to flow to fraudulent operations. Indeed, an entire generation of trade school students - mostly minorities - has been turned into a permanent underclass with loans they will never be able to repay, foreclosed educational opportunities, and perhaps permanent disenfranchisement from the work force. This is a far cry from the educational opportunity Title IV was meant to create.

The current statutory scheme has proved totally inadequate to prevent proprietary trade school abuse of Title IV programs. The legislative and regulatory reforms of the past few years may provide the illusion that the problem has been taken care of; it has not. Some of the amendments have been manipulated by proprietary schools to their advantage; others have been so narrowly interpreted by the Department of Education that they have become virtually meaningless. Worst of all, none of the reforms of the past several years provide any relief for individual students. Thus, when a proprietary school which never should have been eligible for Title IV aid in the first instance defrauds a student or closes prematurely, the Department simply "blames the victim" by harassing the student to repay the loan.

A telling example of the Department's failure to protect students is its recent co-sponsorship with an accreditor, the National Association of Trade and Technical Schools (NATTS), of a booklet on choosing a vocational school. In 1988, the Department issued a report prepared by Pelavin Associates that catalogued the widespread consumer fraud problems in the proprietary school industry.

Yet, a year later the Department joined NATTS in sponsoring the booklet, "Getting Skilled, Getting Ahead", which masquerades as a consumer information publication[1], but in reality is simply a promotion for proprietary trade schools over other vocational programs. The booklet contains no admonition about USED's own findings of inappropriate admissions, excessive financial aid obligations, and deceptive practices at some schools. Nor does the booklet offer advice on how to spot and avoid getting entrapped by fraudulent practices. On the contrary, it unequivocally states that accreditation means that a proprietary school truthfully advertises, admits only qualified students, maintains its equipment, charges reasonable fees, and provides guidance and job placement services. The Department knows better. Every school whose owners have been convicted, every school fined or brought up on charges by USED has been accredited. Yet, in this booklet the Department explicitly assures prospective students that accreditation guarantees quality. And the Department's response to my clients who have been victimized by such accredited schools is that the students should have been better shoppers.

Because of the inadequacy of the current statutory scheme and the attitude of the Department, which sides with the schools against students, drastic legislative change is imperative. The City of New York has proposed amendments to the HEA that deal with different aspects of the trade school problem including:

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[1] A copy of a consumer protection comic book developed by a consortium of student advocates in New York and entitled "The Career School Con Game" is annexed for your information. If the federal Consumer Information Center which has been distributing "Getting Skilled, Getting Ahead" continues to do so, the Postsecondary Education Subcommittee should request that the Center also enclose and distribute copies of "The Career School Con Game" in order to present a more balanced view.

- Separate Definition For Proprietary Trade School
- Loan Cancellation and Renewed Eligibility for Financial Aid for Students at Closed Trade Schools
- *Pro rata* Refunds for Proprietary Vocational Schools
- Barring "Origination" Relationships Between Trade Schools and Lenders
- Assuring Fiscal Capability of Trade Schools
- Performance Standards for Trade Schools
- Enforcement of the "Two Years in Existence" Requirement for Title IV Eligibility
- Meaningful Standards for the Accreditation Process
- Private Right of Action for Students
- Meaningfully Informing Students of their Loan Deferment Rights
- Removing Student Loan Debts from the Tax Refund Offset Program For Students Victimized by Disreputable Trade Schools.

I strongly support these proposals for reasons that I will outline in this testimony. A copy of the proposals is annexed hereto.

I. SOUTH BROOKLYN LEGAL SERVICES' EXPERIENCE WITH PROPRIETARY TRADE SCHOOL ISSUES

In the past four years, our office has represented hundreds of trade school students. We currently have complaints against 20 different trade schools in New York City and have brought class action suits against several of these, only to have the schools enter bankruptcy. So far, the frustrating results of our efforts are prolonged litigation against corporate shells with little or no assets; students who have received no training or jobs, are saddled with defaulted loans and barred from further educational opportunities; and taxpayers who must pick up the tab on not only the defaulted loans but on the interest and other loan subsidies that sustained these fraudulent operations.

In May, 1987, in conjunction with the law firm of Willkie Farr and Gallagher (serving as pro bono co-counsel), we filed a lawsuit in federal district court for the Eastern District of New York against Adelphi Institute, Inc. ("Adelphi," no relation to Adelphi University) and its owners and officers raising claims under the federal Racketeer Influenced Corrupt Organizations ("R.I.C.O.") and Higher Education Acts as well as fraud, misrepresentation, breach of contract, breach of fiduciary duty, and Deceptive Practices Act violations. (Awilda Moy, et al. v. Adelphi Institute, Inc., et al., Civil Docket No. 87-1578.) The suit alleges, among other things, that Adelphi was run not to provide education or training, but as a fraudulent scheme to obtain government revenues in the form of grants and loans.

Just months prior to Adelphi becoming licensed by New York State and accredited by AICS, its principal owner had been convicted of defrauding the federal government of Manpower Training funds. At its peak, Adelphi, a nationwide chain, had six New York locations, enrolled several thousand students, and received $80-120 million in state and federal grants and loans. Two months after we filed the lawsuit, Adelphi filed a Chapter 11 bankruptcy reorganization petition; two months after that, Adelphi closed its doors nationwide and converted its bankruptcy into a Chapter 7 liquidation. In 1989, the principal owner was indicted in New York State court in Manhattan for unlawfully withholding student loan refunds. We believe that, nationwide, Adelphi failed to refund approximately $10-12 million in student loans, the bulk of which are probably now defaulted. The plaintiff class has been certified against Adelphi's owners and operators, but the action against the school corporation remains stayed due to the bankruptcy. Adelphi was accredited by AICS and NATTS.

In February, 1988, our office filed (subsequently joined by the law firm of Davis Polk and Wardwell as pro bono co-counsel) a class action lawsuit in New York State Supreme Court, Kings County against Market Training Institute, Inc. ("MTI") and its owners alleging fraudulent inducement, misrepresentation, breach of contract, breach of fiduciary duty, and Deceptive Practices Act violations. (Joseph Figueroa, et al. v. Market Training Institute, Inc., et al., Index No. 4539/88.) In 1989, New York State's loan guarantee agency terminated MTI's participation in its program because of MTI's wrongdoing in handling student loans. In August, 1989, in the midst of litigation, MTI filed a Chapter 11 bankruptcy petition which has since been converted to a Chapter 7 liquidation. MTI was accredited by AICS.

As these two cases illustrate, there are limited benefits to students litigating within a fundamentally flawed system where the accrediting bodies and the U.S. Education Department sometimes seem aligned with the schools against the student-consumers' interests and where school bankruptcy filings interfere with financial recovery. Because proprietary trade schools can fold up their tents overnight -- their only asset being the ability to tap into the flow of federal student aid -- our experience shows that chances for recovering damages through litigation are slim. And any relief achieved years after the fact can never fully compensate students for the multiple harms done to them.

II. RECOMMENDATIONS

A. Separate Statutory Definition For Proprietary Trade School

My clients present a strong need and desire for high quality basic literacy and English-as-a-second-language programs, and for job training. Based on their experiences, proprietary trade schools do not fill that need because they are profit-, rather than product-driven. Indeed, the U.S. Senate Permanent Subcommittee on Investigations found that the vast majority of waste, fraud and abuse in Title IV programs was perpetrated by proprietary schools. See "Abuses in Federal Student Aid Programs", Hearings Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, U.S. Senate, S. Hrg. 101-659, pt. 2, p. 145, Staff Statement.

The present regulatory scheme has developed standards and controls oriented towards regulating traditional, non-profit institutions of higher education. This system has failed to maintain minimal levels of quality in proprietary trade schools, and in fact may have fostered school owners' greed and widespread fraudulent practices. For example, Leonard Hausman, the former owner of a computer school in New York convicted of theft of federal funds, testified at a related criminal trial that in 1981, the school's first year of operation, prior to receiving federal funds, he drew a salary of $10,000-12,000/year. One year after receiving accreditation, I believe by NATTS, and federal Title IV funds, his salary skyrocketed to $700,000. Through litigation and school bankruptcy filings, we are finding countless examples of school owner fortunes - real estate empires, yachts and luxury cars - derived from guaranteed student loan funds and built on the backs of poor students who wanted nothing more than to better their lives and those of their children by getting quality training and a decent job. Clearly, the current system provides strong incentives and opportunities for profiteering.

One solution is to acknowledge the differences between proprietary trade school businesses and other institutions of higher education and to regulate them separately by creating a different definition for "proprietary vocational schools" within the HEA. This different definition would be the foundation on which the other statutory provisions would rest, thereby making for-profit schools subject to the performance standards, limits on loan origination, etc. set forth in Recommendations B-K.

B. Loan cancellation and renewed eligibility for financial aid for students at closed trade schools

A rash of proprietary trade school closings over the past four years has left thousands of low-income students unable to complete their programs and yet obligated to repay student loans which the schools received on their behalf. The students may have received no training or certificate of completion, and consequently may not ever have the means to repay the loan. Trade schools that close abruptly also tend to follow a pattern of having failed to make loan refunds owed to students who never actually enrolled or who withdrew prior to program completion. In either case, once a student has defaulted on repayment of a guaranteed student loan, he is barred by federal law from eligibility for all future Title IV student financial aid, including grants and loans. Such students thus find themselves in a double bind: deprived by the school closing of the job training for which they incurred the original loan obligation, they are also barred from receiving the future financial aid necessary for them to acquire the training which would enable them to repay the loan.

Adelphi Institute, Inc. (no relation to Adelphi University) is a case in point. Based in Phoenix, Adelphi Institute had six schools in New York City, as well as schools in Indiana, Michigan, Colorado and California. At its closing in September, 1987, by its own account Adelphi left unpaid student loan refunds of roughly $12 million and several hundred students in attendance. Despite the breadth of the school closing problem and the notoriety it has obtained, the U.S. Education Department ("USED") has done nothing to protect students affected by the closings.

For student-borrowers who have been adversely affected by school closings, the HEA should be amended to allow for loan cancellation, re-established financial aid eligibility, and credit record corrections. Thus students who through no fault of their own were unable to complete a program or obtain a refund owed to them would be able to get out from under onerous loan obligations and make a fresh start at a legitimate educational institution.

C. Requiring pro rata refunds for proprietary vocational schools

Proprietary trade school students are often enrolled into programs which they are not able to complete, which fail to provide adequate instruction or equipment, or which train them for jobs that do not exist. Yet students who withdraw from such programs even early in their enrollment find that student loan and grant payments as well as cash payments already made to the school are generally not refundable. Front-loaded tuition liability policies in effect at most proprietary schools mean that these schools keep most of the money even if the student stays only a few weeks. These policies also mean that proprietary schools have no incentive to retain students. USED's current regulations require a pro rata refund policy for each school notified by the Secretary that its default rate exceeds 30 per cent for any fiscal year after 1986, until its rate declines to 30 percent or less. Because of the lag time in compiling and calculating default rates, USED's current sanction of a pro rata refund policy may not be imposed until years after the problems that led to the high default rate occurred -- perhaps not until the school is about to close. Also, manipulation of default rate calculations has artificially lowered the rates reported, thus allowing some schools with the highest actual default rates to elude the ambit of the regulation. Requiring pro rata refunds for all proprietary trade schools as a condition of Title IV eligibility would serve as a deterrent to fraudulent behavior.

D. Barring or limiting "origination" relationships between trade schools and lenders

Many trade school student-borrowers never go to a bank to obtain a student loan; the trade school provides the loan applications, often pre-printed with an out-of-state bank's name, and completes all loan application and promissory note paperwork. Any "counseling" to be done explaining borrowers' rights and responsibilities vis a vis student loans is thus left to the school which, due to its own profit-making motivation, has a disincentive to fully inform the student of the obligation he is incurring. The result is that proprietary trade school students often do not understand that they have incurred a student loan obligation; in-school "counselors" may tell them that "financial aid" will cover their costs, without explaining that financial aid includes loans which have to be repaid. In addition, where out-of-state lenders are involved, trade school students often find communicating with them difficult. For these reasons, and because proprietary schools have strong incentives to misrepresent to prospective students the nature of the loan obligation, these arrangements (known as "origination relationships") by which the school acts as the bank's agent should be discouraged if not barred.

While the HEA does not explicitly authorize proprietary vocational schools to provide and complete the paperwork for loan applications, USED's regulations have allowed schools to "originate" loans in this manner for some time under certain conditions. These conditions have been breached more often than observed, however; and the Secretary has proposed to loosen the conditions even further.

I recommend two alternative solutions. First, the HEA could be amended to bar proprietary vocational schools from originating loans. Proprietary school students who want student loans could still obtain them independently by going to a local bank, getting a loan application and loan information from the bank, and returning the loan application to the school for completion of the institutional portion only.

In the alternative, the Act could be amended to require the promissory notes for loans originated by the school to contain a "preservation of claims and defenses" clause, similar to that required by the Federal Trade Commission "Holder-in-Due-Course Rule", stating that borrowers whose loans were originated by their trade school may assert against the holder of their loan any claims and defenses they have against the school and to require that in the absence of such notice, the lender or other holder be held liable for such claims and defenses if the student shows that the loan was, in fact, originated by a vocational school.

E. Assuring fiscal capability of vocational schools certified to participate in Title IV

The U.S. Department of Education Inspector General's Office has found that USED's process for certifying the financial capability of proprietary schools to participate in Title IV funding fails to protect adequately both students and the federal government. The Inspector General's September 1990 Audit (Control No. 11-80160, entitled "Financial Analysis Certification Process Not Adequate to Protect Students and Government") found that USED certified practically all schools that applied to participate in Title IV programs and documented instances of schools certified despite negative net worth, net losses, and assets of only one-third their liabilities. The Inspector General found, in fact, that USED emphasized "a certification production quota rather than ... the careful screening of applications" (Audit p. 13). When these unstable schools close -as 167 schools did over the two and one-half fiscal years examined by auditors - students are left unable to collect tuition and student loan refunds owed to them. The Inspector General estimated that the 167 schools which closed during the period he examined, left $30 million in federal student financial aid "at risk." I believe the potential loss is far greater.

Currently, the HEA sets no specific standards for USED to follow in certifying proprietary schools as sufficiently financially responsible to qualify for Title IV eligibility. Such statutory standards are clearly needed for protection of the federal fisc and student liability.

The HEA should be amended to mandate that the Secretary of USED certify as eligible only those proprietary schools that have sufficient assets to, inter alia, provide the services stated in their official publications and comply with the requirements of the HEA and regulations promulgated thereunder, including the requirement of making timely student loan refunds. The amendments should require that, in conjunction with an application for certification or recertification, a proprietary vocational school submit audited financial statements certified by a certified public accountant. The amendments should deem a proprietary school not financially responsible under certain conditions, such as showing a deficit net worth.

F. Performance standards for trade schools certified to participate in Title IV

Title IV student financial aid programs provide a huge source of federal money for proprietary trade schools without controls to ensure that the schools provide quality education and training. Federal government investigators who have examined the existing system for regulating proprietary trade schools have unanimously concluded that it protects neither students nor federal funds.

Currently, no governmental body evaluates the quality of training and education at proprietary trade schools. This responsibility is statutorily delegated to private accrediting agencies. But accrediting agencies, which are organizations largely composed of and often dominated by school operators, have failed to maintain minimum levels of quality in proprietary trade schools. This lack of effective control has been easily exploited by unscrupulous trade school owners.

Access to student aid programs should be limited to proprietary trade schools with proven track records of getting students trained and into the work force; proprietary schools should maintain adequate performance in order to continue receiving federal money.

Job training and placement, the stated goals of proprietary trade schools, naturally lend themselves to objective standards and measures. Completion and placement rates are logical indicators of whether such schools train their students effectively and provide skills that are in demand in the private job market. The HEA should be amended to make proprietary trade schools' eligibility to participate in student aid programs contingent on meeting at least a 60% completion and placement rate. Verification of whether a trade school meets the required standards should be integrated into the process by which the Department of Education certifies the schools' eligibility for participation in Title IV programs. The HEA should require that, in conjunction with an application for certification or recertification, a proprietary trade school submit an audited statement certified by an independent auditor reflecting the school's completion and placement rates.

G. Ensuring enforcement of the "two years in existence" requirement for Title IV eligibility

Scrutinizing new trade schools before they become eligible does not solve the problem of eligible trade schools that are purchased by new owners or that create new branch schools. In both situations, contrary to the statutory provision that requires schools to be in existence for 2 years prior to eligibility for Title IV aid, new trade schools have been afforded immediate eligibility based upon the parent school's eligibility. This automatic eligibility has resulted in serious abuses of Title IV funds. Branch schools have been set up with grossly inadequate resources, often in states far away from the parent schools, teaching subjects entirely different from those taught at the parent school. Rapid expansions by new owners or by branching have often led to sudden collapse - after collection of huge amounts of Title IV funds. USED's Division of Eligibility and Certification and the Inspector General have identified circumvention of the two year rule as a primary concern. (USED Inspector General Management Improvement Report No. 90-13, Feb. 20, 1990, "Unrestricted Branching is Detrimental to Students and Taxpayers"). In order to assure that schools under new ownership and new branches will provide quality education and training, they should, at minimum, be treated the same as schools seeking eligibility for the first time. The HEA should be revised so that the eligibility of trade schools purchased by new owners and of new branches of currently eligible parent schools would be contingent on meeting the same "two years in existence" requirement and the same performance standards (described in Section F) that a new trade school must meet.

H. Making The Accreditation Process Meaningful

The Department of Education currently relies almost exclusively on private accrediting agencies to evaluate and vouch for the quality of educational institutions before they can participate in federal student aid programs. While this system with its self-evaluation and "peer review" may be adequate for non-profit colleges, it clearly is not working to the benefit of students or taxpayers with respect to proprietary trade schools. As one State agency report has noted, "Accreditation is a peer-review process -- vocational school operators evaluating each other .... Because they are composed of school operators, they come closer to being trade associations than objective evaluating bodies .... [T]hese accrediting agencies work against the public interest by creating the impression in the public mind that they schools have been endorsed by truly objective evaluating bodies." New York State Consumer Protection Board Report, July 20, 1978, "The Profits of Failure", pp. 72-3.

The accreditation process is a regulatory scheme that evolved to suit the needs of traditional, non-profit institutions of higher education. Accreditors accept data provided by schools without independent verification. On-sight visits are usually announced. These lax procedures have proved inadequate to ensure quality services by for-profit trade schools.

In many instances, accreditors grant approval or fail to impose sanctions against proprietary trade schools even though they are subject to state regulatory fines, disallowances, and disciplinary actions. A school may even remain accredited if it has had its license revoked by a state in which the school operates.

The failure of the proprietary school accrediting system is not surprising in view of the cozy relationship between the accreditors and the accredited. For example, an accrediting agency is free to allow its accreditation decision-making body to be dominated by schools accredited by the agency, thus creating a blatant conflict-of-interest.

Even when accrediting agencies attempt to discipline "problem schools", their actions are not effective because proprietary schools can obtain accreditation from more than one agency, and thus maintain eligibility for federal student aid funds in the event that an agency terminates the school's accreditation. HEA amendments passed in 1989 attempt to address the accreditation shopping problem by providing that a school may not be eligible for Title IV funds if the institution had its accreditation revoked within the preceding 24 months. The new provision creates exceptions, however, that allow the Secretary to second-guess a revocation or an agency to change its mind, thereby threatening to swallow up the rule.

The HEA should be amended to define certain minimum requirements to help ensure that proprietary trade school accrediting agencies live up to their responsibilities and accredit only schools that provide quality education and training. Specifically, the proposed amendments should require accrediting agencies to evaluate each branch of a school separately; to conduct annual, unannounced on-sight visits of their accredited schools and each of the school's branches; to maintain independent accreditation decision-making bodies; and to terminate accreditation if a school's license has been revoked in any state in which the school operates. The HEA should also be amended to close the loopholes in the 1989 legislation and to rectify the dual accreditation problem.

I. Making explicit a private right of action under the HEA

USED's enforcement of the HEA and of it's own regulations has been extremely lax. Whether from inadequate resources, failure of will or influence by trade schools or accreditors, lack of enforcement makes meaningless any reforms enacted. Even when USED does take action against trade schools, lenders, or guarantors, the remedy is often a sanction against the school which affords no relief to individual students. Adding an explicit right of action would allow students to act as private attorneys general, thereby creating a deterrent effect and expanding USED's power to enforce the HEA.

J. Meaningfully informing students of their loan deferment rights

The HEA currently provides for deferments of student loan repayment obligations under certain circumstances. Borrowers, however, are often unaware of their deferment rights. The only statutory requirement concerning notification of these rights is that they be contained in the loan promissory note. Thus, borrowers who are entitled to a postponement in repaying their loans may unwittingly slip into default, thereby foreclosing themselves from future Title IV eligibility and damaging their credit ratings.

The HEA should be amended to require lenders and guarantors periodically to notify all student borrowers of their deferment rights. Deferments should also be available retroactive to the date of delinquency, upon the borrower's showing that he would have been so entitled on that date if he had timely applied. In order to fully clear the borrower's record, obtaining a retroactive deferment should remove the borrower's "default" status and reestablish his eligibility for federal financial aid.

K. Removing student loan debts involving disreputable proprietary trade schools from the tax refund offset program

Under the tax refund offset program, USED certifies to the IRS student loans that are allegedly "past due" and "legally enforceable". The IRS then withholds the taxpayer/student loan borrowers' federal income tax refund and Earned Income Credit due, if any, and turns them over to USED. Such alleged debts are usually prejudgment and often the subject of dispute by the debtor. Current law allows USED to consider debtor objections, but does not require USED to refrain from sending the IRS alleged debts involving problem schools. Thus, USED sends to the IRS for offset alleged debts involving proprietary trade schools against which USED may even have administrative action pending, which may have closed, and which may have had their accreditation or State license withdrawn. Borrowers find it virtually impossible to stay USED or the IRS from using the tax refund offset process, even where there is a question as to whether the borrower has a defense to collection of the alleged debt.

The Internal Revenue Code should be amended to exclude from the tax refund offset program alleged student loan debts involving certain categories of proprietary vocational schools proven to be "problem schools" such as those against which government agencies have commenced administrative or judicial action.

Thank you for this opportunity to testify. I would be happy to answer any questions you might have and to provide further details about my clients' experiences with Title IV programs.

Mr. ANDREWS. Thank you, Ms. Imholz. We'll now go to Mr. Resso.

Mr. RESSO. Mr. Chairman, members of the House Subcommittee on Postsecondary Education, my name is Arthur Resso. I'm President of the Continental Beauty School for 30 years, and I'm also Chairman of the Association of Accredited Cosmetology Schools, AACS. I'm pleased to have this opportunity to testify before you today.

Over the last 5 years, Congressional concern with the quality of education provided by institutes whose students receive support under the programs authorized by the Higher Education Act has increased dramatically. This concern is a reflection of several factors, including the dollar volume defaults and negative publicity regarding schools violating programs' regulations.

These two factors, combined with the ongoing efforts of Congress to reduce the budget deficit, have resulted in the enactment of several bills which contain provisions that address the issue of schools identified as abusive.

AACS supports efforts to eliminate waste and abuse in the Federal system programs. The Congress, however, has gone too far in attempting to respond to the public concerns in this area by enacting provisions that directly eliminate schools from the student loan program.

We estimate that many thousands of students will be adversely affected by the cut-off of so-called high default schools. I believe this is a bad policy that is contrary to the continuing efforts to expand educational opportunity.

The GAO in a recent review of available studies on student loan defaulters has identified the social and economical background of students as the principal predictor of student loans default. Cosmetology schools primarily serve students who have those characteristics defined with defaulters; that is, low income and minority students.

Should cosmetology schools be treated the same as schools predominantly with middle and upper income students? I don't think so. And I agree with Congressman Gaydos when he says labeling of our schools as high default schools is unfair and the legislation enacted based on this misconception should be repealed.

Mr. Chairman, as a school owner, I do not appreciate my school being called a high default school. My school doesn't borrow under the GSL program; my school doesn't guarantee the loans; my school does not collect the loans.

Mr. Chairman, turning to specific items of the program integrity, I would like to first of all point to the absence of integrity in the cohort default rates utilized by the Department of Education.

These cohort default rates have been widely accepted as a proxy for educational quality, even though significant data exists that suggests that such a correlation is false. A school is charged with a high default rate even though the lender may have failed to provide adequate due diligence.

In addition to servicing problems, instances have also been brought to the department's attention of cases where a school has been inappropriately charged with a default or where a default has been registered for a school who never attended the institution. It is incredible to me that the Department of Education must now implement a structure for the elimination of schools from the Title IV program on such a flimsy basis.

AACS disagrees with the characterization of accrediting bodies as nothing more than the industry controlled puppets. In the cosmetology field, we find our accrediting body often is aggressive and has established sound standards for the measurement of educational outcome.

Congress should consider the enactment of legislation clearly defining the appropriate roles of States, accrediting bodies and the department, ensuring the integrity of schools.

Before the Congress enacts on such legislation, however, the current system needs to be reviewed and understood thoroughly. The quality of education and the State licensure process should be the subject of in-depth hearings.

The presumption that school, that States, or a particular accrediting body are doing a poor job in evaluating the institutions on the basis of student loans default rates is, in our view, unfair and misleading.

In closing, Mr. Chairman, I'd like to thank this committee for its long history of support for the Pell grant and student loan programs. Our students have the opportunity created by these programs to change their lives. With an education, these students have become taxpayers. To me, the student aid is a good investment, and we can not afford to lose sight of the true purpose of the student aid program as we continue our effort to reduce defaults.

Mr. Chairman, I would like to submit at a later date for the record, some materials and examples that some of our schools use in default reduction. And I want to thank you very much for this opportunity to testify before you today.

[The prepared statement of Arthur Resso follows:]

AACS
Association of Accredited
Cosmetology Schools

TESTIMONY OF

ARTHUR RESSO

CONTINENTAL BEAUTY SCHOOLS

ON BEHALF OF

ASSOCIATION OF ACCREDITED COSMETOLOGY SCHOOLS

BEFORE THE

HOUSE SUBCOMMITTEE ON POSTSECONDARY EDUCATION

May 21, 1991

WASHINGTON OFFICE:
5201 LEESBURG PIKE, SUITE 205, FALLS CHURCH, VA. 22041 (703) 845-1333 FAX: (703) 845-1336

Mr. Chairman, members of the House Subcommittee on Postsecondary Education, my name is Arthur Resso, President of Continental Beauty Schools. I am also Chairman of the Association of Accredited Cosmetology Schools (AACS). I am pleased to have the opportunity to testify before you today on the issue of program integrity.

I would like to open my testimony today by thanking the Congress, on behalf of the students who receive aid under Title IV, for your support for these programs. The educational opportunities created by federal student aid have turned hundreds of thousands of low-income students into middle-income taxpayers. I hope the reauthorization will continue to make this opportunity available.

Unfortunately, recent Congressional actions have raised the specter of hundreds of thousands of students being excluded from the student loan programs.

Over the last five years, Congressional concern with the quality of education provided by institutions whose students receive support under the programs authorized under the Higher Education Act has increased dramatically. This concern is a reflection of several factors, including increases in the dollar volume of loans lost to defaults and negative publicity, released by the Department of Education and generated by the press, regarding schools violating program regulations. These two factors, combined with the ongoing efforts of the Congress to reduce the Federal budget deficit, have resulted in the enactment of several bills which contain provisions directed at the issue of schools identified as "abusive" and holding out the promise of reducing waste in Federal student assistance programs.

AACS supports efforts to eliminate waste and abuse in Federal assistance programs. However, the Congress must recognize that these efforts, if not properly conceived, will force even the best administered institutions out of the loan programs. Congress has already gone too far in attempting to eliminate waste and abuse by adopting Section 3004 of last year's Omnibus Budget Reconciliation Act. Cosmetology schools are frequently identified as high-default schools as if they serve the same socio-economic categories of students as many of the lowest-default-rate four-year institutions. This labeling of our schools is unfair. Schools do not default--borrowers default. Schools are limited in what they can do to control, i.e., lower, default rates. Even the best administered school, serving a low-income, primarily minority population, will have high default rates. Because of this, the enactment of legislation establishing GSL eligibility based on default rates is about to result in the termination of loans to those students most in need of financial aid.

Studies have shown that there are several factors which contribute to a school's default rate which are beyond the school's control. One of the most influential factors is the demographics of the student population. Whether a student is white, black or hispanic; male or female; single, married or divorced; how many dependents the he or she has; comes from a low or high socio-economic background--all these factors directly influence the likelihood that a student will default on a GSL. It is unrealistic to expect a school serving a minority, low-economic area to have the same default rate as a school serving a middle-class white neighborhood. There are several cases where a number of schools have the same owner, the same basic administrative staff, and the same default management plans, but have significantly different default rates. The only logical explanation for this phenomenon is the difference in student population.

If Congress and the Department of Education do not to give significant weight to a school's population in determining eligibility for GSL's, the most needy elements of our society will be denied access to quality education. It is tantamount to the "red-lining" of educational opportunity. The very class of people who need assistance the most will be excluded if default rates alone are used to determine a school's quality.

AACS has supported the development by the Department of Education of improved training and an increased number of program reviews to help schools address problems in the administration of the aid programs. In fact, AACS offers financial aid workshops to ensure that its member institutions are kept up-to-date on the continuous changes in financial aid. In addition, four years ago, the Association instituted a Loan Counsel Task Force to better address the needs of students. Further, the Association was an active participant in the Private Career School Default Management Initiative which produced a Default Management Manual and a series of default management workshops. The Association has also supported the principal accrediting body for cosmetology, the National Accrediting Commission on Cosmetology Arts and Sciences (NACCAS), in an effort to weed out schools not interested in providing quality education. These efforts, we believe, have borne fruit. We also believe, however, that schools specifically focused on providing services to low-income students cannot be expected to achieve default rates remotely similar to those schools serving the educationally and economically privileged. The reauthorization will be a major step away from Lyndon Johnson's image of expanding educational opportunity if schools are allowed to close for no reason other than the fact that they are located in and serve low-income communities and their students.

Mr. Chairman, turning to specific items of program integrity, I would like to first of all point to the absence of integrity in the cohort default rates utilized by the U.S.

Department of Education. These cohort default rates have been widely accepted as a proxy for educational quality, even though significant data exist suggesting that such a co-relation is false. A school is charged with a high default rate even though the lender or servicer on the loan may have failed to provide full due diligence. I draw to your attention the recent agreement between the Education Department and the Resolution Trust Corporation (RTC) allowing for the restoration of guarantees on loans where the guaranty has been lost due to failure to perform due diligence. The restoration of guarantees on these loans means that the school which the borrower attended will be held accountable for the default, even though the default may have been caused by the failure of the lender or servicer to perform due diligence.

In addition to servicing problems, innumerable instances have also been brought to the Department's attention of cases where a school has been inappropriately charged with a high default or where a default has been registered for a student who never attended a particular institution. It is incredible to me that the Department of Education has been allowed to promote a structure for the elimination of schools from the Title IV program on such a flimsy basis.

AACS believes that it is imperative for the Congress to enact emergency legislation delaying the cut-off of high-default schools. Additional thought and study must be given to the problem of measuring the quality of a particular school. Graduate rates, completion rates, actual dollars in default, and the socio-economic characteristics of the student body must be factored into any appraisal of a school's administrative capabilities.

AACS disagrees with the characterization of accrediting bodies as nothing more than industry-controlled puppets. In the cosmetology field, we find that our accrediting body often is aggressive, and has established sound standards for the measurement of educational outcomes. AACS supports the enactment of legislation clearly defining the appropriate roles of States, accrediting bodies and the Department of Education in assuring the integrity of schools.

Before the Congress enacts such legislation, however, the current system needs to be reviewed and understood thoroughly. The quality of accreditation and the state licensure process should be the subject of in-depth hearings. The presumption that states or a particular accrediting body are doing a poor job in evaluating their institutions on the basis of student loan default rates is, in our view, unfair and misleading. This authorizing subcommittee, with its expertise, should be the source to correct these misunderstandings.

In closing, Mr. Chairman, I would like to share with you some summary information on the characteristics of cosmetology schools. This information is taken from a 1988 paper prepared by JBL Associates:

--Over 200,000 students are currently enrolled in cosmetology schools;

--Approximately 61 percent of the students who enroll in private accredited cosmetology schools graduate. (This compares with 44 percent of those enrolled in community colleges.)

I would also like to point that the cosmetology industry in and of itself is a $25 billion industry, employing over 750,000 people nationally. Our schools are a fundamental part of this industry, and our survival should be seen as a legitimate, worthwhile goal as this reauthorization moves forward.

I would be happy to respond to any questions you or other Members of the Subcommittee might have.

(301A200)

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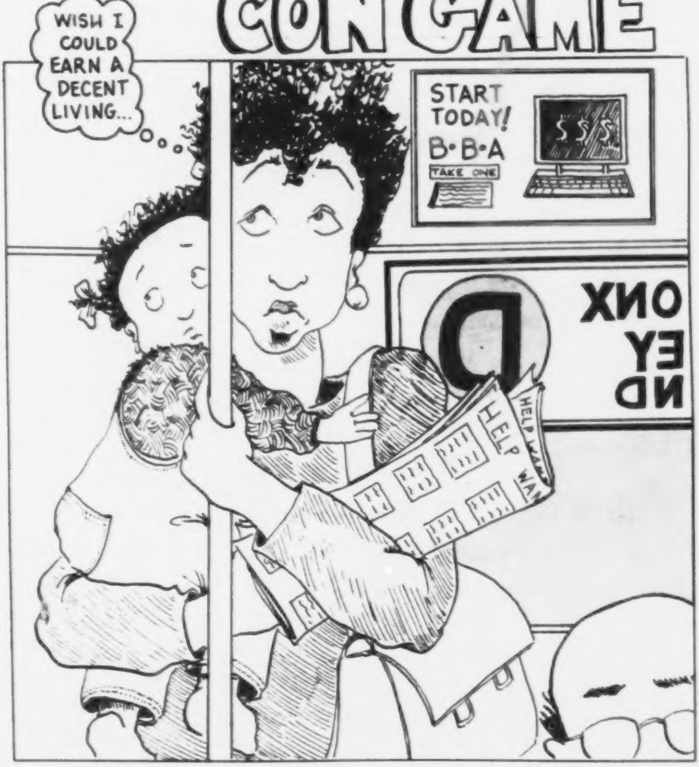
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"The Career School Con Game" is a joint project of South Brooklyn Legal Services, New York Law School, and Vocational/ Educational Information Network (V.E.I.N.).

- **South Brooklyn Legal Services** offers free legal services to low-income people as part of the City-wide program of Community Action for Legal Services, Inc.

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- **V.E.I.N.** is a coalition of educators, community groups, and attorneys established to advocate for effective vocational education services for residents of New York State.

All characters and organizations represented in **"The Career School Con Game"** are fictional. Any resemblance to real characters or organizations is purely coincidental.

This comic book has been made possible by a generous grant from the Robert Bowne Foundation and has been designed specifically to reach teens and others who may have reading difficulties.

For information about how to obtain additional copies of **"The Career School Con Game"**, write to:

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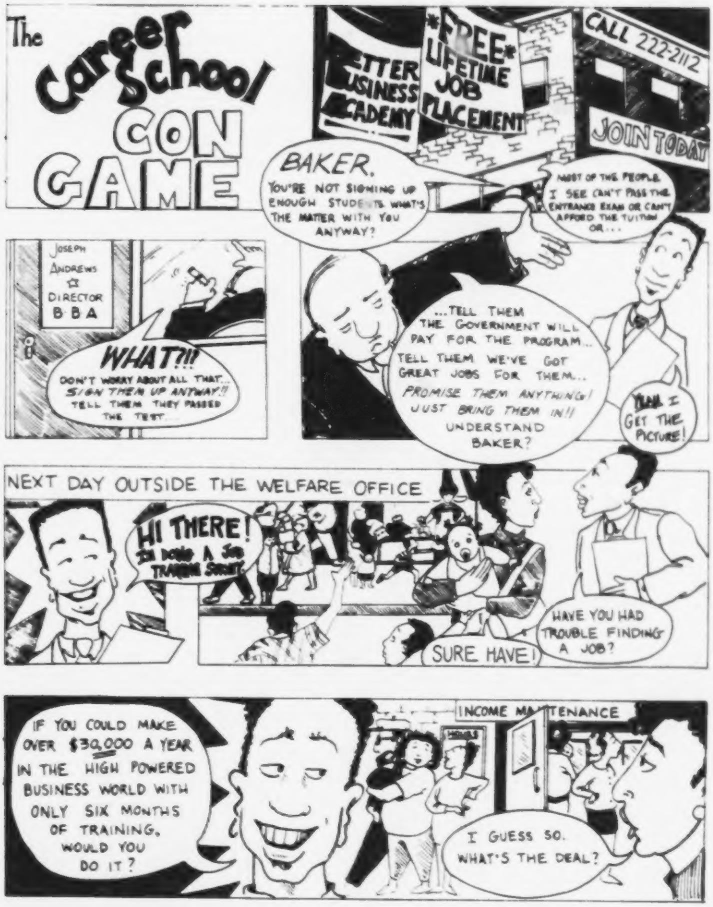
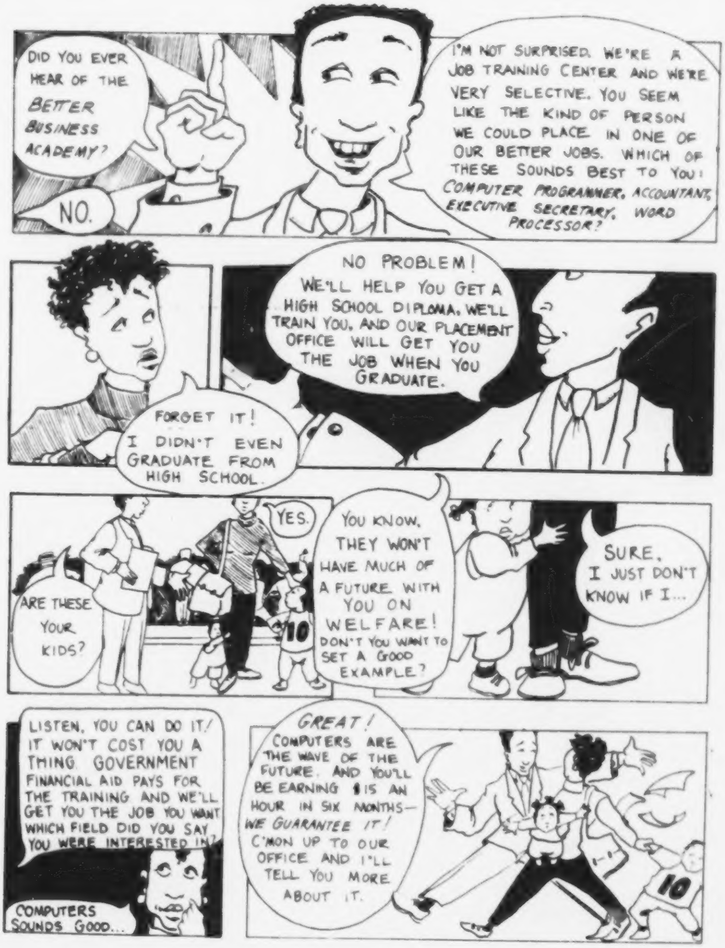

The Career School CON GAME
BETTER BUSINESS ACADEMY
FREE LIFETIME JOB PLACEMENT
CALL 222-2112
JOIN TODAY
BAKER, YOU'RE NOT SIGNING UP ENOUGH STUDENTS WHAT'S THE MATTER WITH YOU ANYWAY?
MOST OF THE PEOPLE I SEE CAN'T PASS THE ENTRANCE EXAM OR CAN'T AFFORD THE TUITION OR...
JOSEPH ANDREWS ☆ DIRECTOR B·B·A
WHAT?!! DON'T WORRY ABOUT ALL THAT... SIGN THEM UP ANYWAY!! TELL THEM THEY PASSED THE TEST...
...TELL THEM THE GOVERNMENT WILL PAY FOR THE PROGRAM... TELL THEM WE'VE GOT GREAT JOBS FOR THEM... PROMISE THEM ANYTHING! JUST BRING THEM IN!! UNDERSTAND BAKER?
YEAH I GET THE PICTURE!
NEXT DAY OUTSIDE THE WELFARE OFFICE
HI THERE! I'M DOING A JOB TRAINING SURVEY
HAVE YOU HAD TROUBLE FINDING A JOB?
SURE HAVE!
IF YOU COULD MAKE OVER $30,000 A YEAR IN THE HIGH POWERED BUSINESS WORLD WITH ONLY SIX MONTHS OF TRAINING, WOULD YOU DO IT?
INCOME MAINTENANCE
I GUESS SO. WHAT'S THE DEAL?


DID YOU EVER HEAR OF THE BETTER BUSINESS ACADEMY?
NO.
I'M NOT SURPRISED. WE'RE A JOB TRAINING CENTER AND WE'RE VERY SELECTIVE. YOU SEEM LIKE THE KIND OF PERSON WE COULD PLACE IN ONE OF OUR BETTER JOBS. WHICH OF THESE SOUNDS BEST TO YOU: COMPUTER PROGRAMMER, ACCOUNTANT, EXECUTIVE SECRETARY, WORD PROCESSOR?
FORGET IT! I DIDN'T EVEN GRADUATE FROM HIGH SCHOOL.
NO PROBLEM! WE'LL HELP YOU GET A HIGH SCHOOL DIPLOMA. WE'LL TRAIN YOU, AND OUR PLACEMENT OFFICE WILL GET YOU THE JOB WHEN YOU GRADUATE.
ARE THESE YOUR KIDS?
YES.
10
YOU KNOW, THEY WON'T HAVE MUCH OF A FUTURE WITH YOU ON WELFARE! DON'T YOU WANT TO SET A GOOD EXAMPLE?
SURE. I JUST DON'T KNOW IF I...
LISTEN, YOU CAN DO IT! IT WON'T COST YOU A THING. GOVERNMENT FINANCIAL AID PAYS FOR THE TRAINING AND WE'LL GET YOU THE JOB YOU WANT. WHICH FIELD DID YOU SAY YOU WERE INTERESTED IN?
COMPUTERS SOUNDS GOOD...
GREAT! COMPUTERS ARE THE WAVE OF THE FUTURE. AND YOU'LL BE EARNING $15 AN HOUR IN SIX MONTHS— WE GUARANTEE IT! C'MON UP TO OUR OFFICE AND I'LL TELL YOU MORE ABOUT IT.
10

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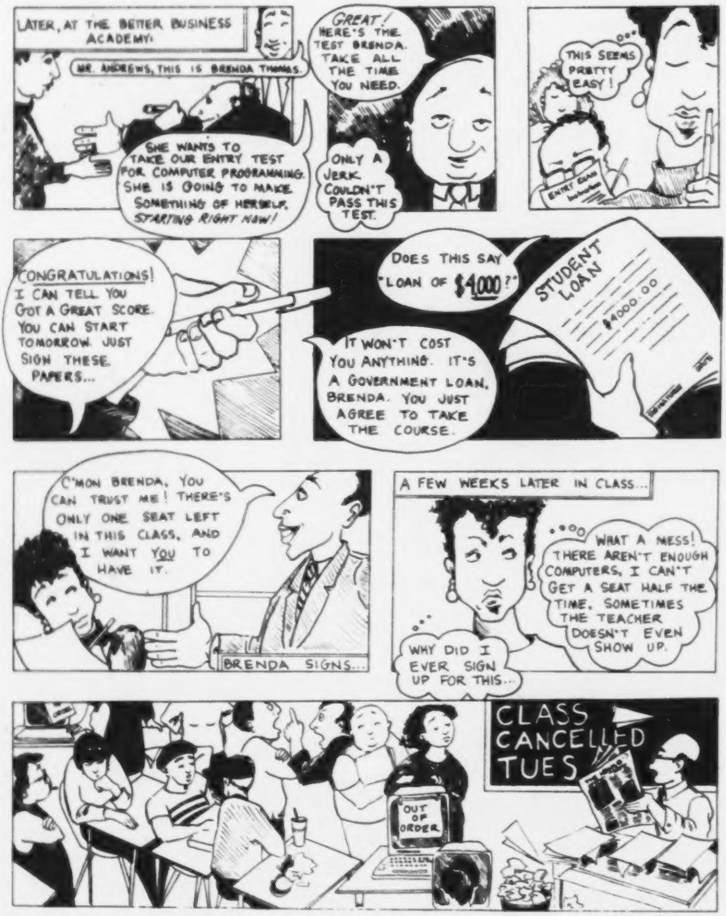
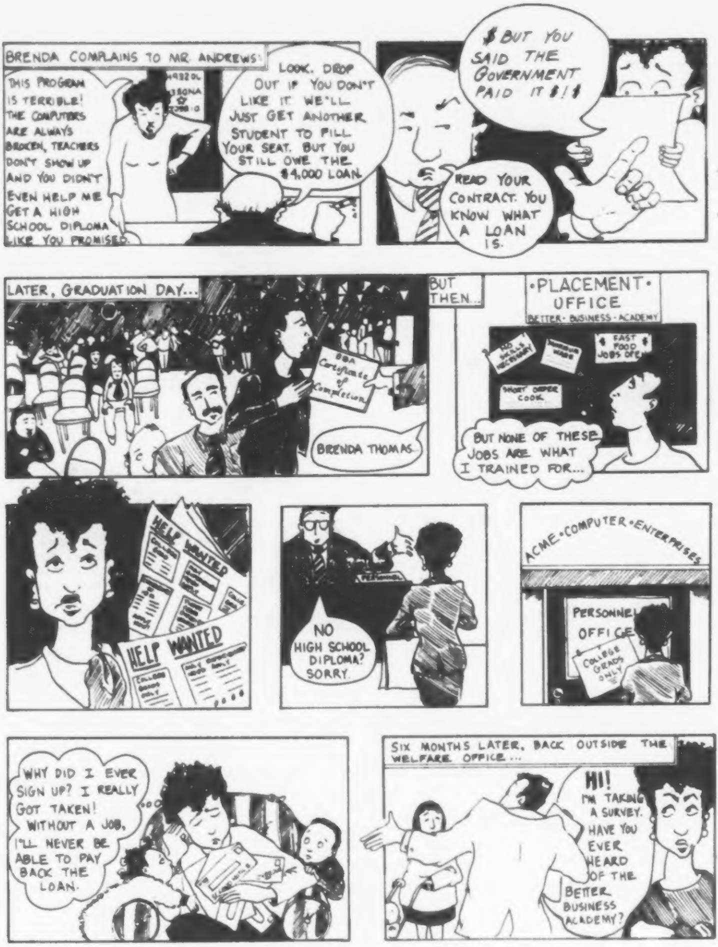
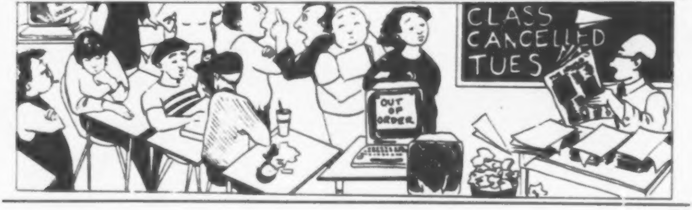

LATER, AT THE BETTER BUSINESS ACADEMY:
MR. ANDREWS, THIS IS BRENDA THOMAS.
SHE WANTS TO TAKE OUR ENTRY TEST FOR COMPUTER PROGRAMMING. SHE IS GOING TO MAKE SOMETHING OF HERSELF. STARTING RIGHT NOW!
GREAT! HERE'S THE TEST BRENDA. TAKE ALL THE TIME YOU NEED.
ONLY A JERK COULDN'T PASS THIS TEST.
THIS SEEMS PRETTY EASY!
ENTRY EXAM
CONGRATULATIONS! I CAN TELL YOU GOT A GREAT SCORE. YOU CAN START TOMORROW. JUST SIGN THESE PAPERS...
DOES THIS SAY "LOAN OF $4,000?"
STUDENT LOAN
$4000.00
IT WON'T COST YOU ANYTHING. IT'S A GOVERNMENT LOAN, BRENDA. YOU JUST AGREE TO TAKE THE COURSE.
C'MON BRENDA, YOU CAN TRUST ME! THERE'S ONLY ONE SEAT LEFT IN THIS CLASS, AND I WANT YOU TO HAVE IT.
BRENDA SIGNS...
A FEW WEEKS LATER IN CLASS...
WHAT A MESS! THERE AREN'T ENOUGH COMPUTERS, I CAN'T GET A SEAT HALF THE TIME, SOMETIMES THE TEACHER DOESN'T EVEN SHOW UP.
WHY DID I EVER SIGN UP FOR THIS...
CLASS CANCELLED TUES
OUT OF ORDER


BRENDA COMPLAINS TO MR ANDREWS:
THIS PROGRAM IS TERRIBLE! THE COMPUTERS ARE ALWAYS BROKEN, TEACHERS DON'T SHOW UP AND YOU DIDN'T EVEN HELP ME GET A HIGH SCHOOL DIPLOMA LIKE YOU PROMISED.
LOOK. DROP OUT IF YOU DON'T LIKE IT. WE'LL JUST GET ANOTHER STUDENT TO FILL YOUR SEAT. BUT YOU STILL OWE THE $4,000 LOAN.
$ BUT YOU SAID THE GOVERNMENT PAID IT $!$
READ YOUR CONTRACT. YOU KNOW WHAT A LOAN IS.
LATER, GRADUATION DAY...
BBA Certificate of Completion
BRENDA THOMAS.
BUT THEN...
•PLACEMENT• OFFICE
BETTER • BUSINESS • ACADEMY
NO SKILLS NECESSARY
MINIMUM WAGE
$ FAST FOOD JOBS OPEN $
SHORT ORDER COOK
BUT NONE OF THESE JOBS ARE WHAT I TRAINED FOR...
HELP WANTED
HELP WANTED
NO HIGH SCHOOL DIPLOMA? SORRY.
ACME • COMPUTER • ENTERPRISES
PERSONNEL OFFICE
COLLEGE GRADS ONLY
WHY DID I EVER SIGN UP? I REALLY GOT TAKEN! WITHOUT A JOB, I'LL NEVER BE ABLE TO PAY BACK THE LOAN.
SIX MONTHS LATER, BACK OUTSIDE THE WELFARE OFFICE...
HI! I'M TAKING A SURVEY. HAVE YOU EVER HEARD OF THE BETTER BUSINESS ACADEMY?

DON'T GET RIPPED OFF!

BE CAREFUL!!

- REMEMBER: IT IS EASY TO PROMISE SOMEONE A GOOD JOB, BUT HARD TO DELIVER. MANY SCHOOLS GIVE LOW-QUALITY TRAINING AND DO NOT FIND GOOD JOBS FOR THEIR STUDENTS.
- DON'T FALL FOR SMOOTH TALK! SCHOOLS KNOW THAT PEOPLE ARE DESPERATE FOR GOOD JOBS, AND THEY USE YOUR HOPES AND DREAMS TO CATCH YOU.
- DON'T SIGN ANYTHING -- AN APPLICATION FORM, AN AGREEMENT, ANYTHING -- UNTIL YOU HAVE TIME TO TAKE IT HOME TO READ IT. IF THE SCHOOL WON'T LET YOU TAKE THE PAPERS HOME, DON'T TRUST IT. IT DOES NOT HAVE YOUR BEST INTERESTS AT HEART.



REMEMBER:

IF YOU SIGN FOR A LOAN AND THEN CAN'T PAY IT BACK, HERE'S WHAT HAPPENS:

- YOU WON'T GET CREDIT TO BUY A CAR OR GET A CREDIT CARD.
- YOUR FEDERAL TAX REFUND MAY BE TAKEN BY THE I.R.S.
- YOU MAY BE SUED FOR THE MONEY.
- IF YOU WANT TO GO TO A GOOD SCHOOL LATER ON, YOU WON'T BE ABLE TO GET A LOAN OR GRANT.

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CITY OF NEW YORK'S PROPOSALS FOR AMENDMENTS TO THE HEA.

APRIL 3, 1991

Proprietary trade school abuse of Title IV federal student aid programs has become a disaster of national proportion. For-profit trade school students have been defrauded by promises of free training and high paying jobs, tricked into signing up for student loans they did not need or want, disgusted by broken equipment and teachers who did not teach, and ultimately, sued or harassed because of defaulted loans. On a personal level, the far-reaching consequences in the students' lives include an onerous financial burden, disenfranchisement from the educational system and the work force, loss of confidence in themselves, and loss of faith in the government that allowed funds to flow so freely to fraudulent operations.

On a national level, the collapse of the Higher Education Assistance Foundation, one of the largest loan guaranty agencies, demonstrates how this enormous cost of student loan defaults threatens the entire Title IV program. The United States Department of Education and the General Accounting Office report that proprietary school students default at a rate that is twice as high as two-year, non-profit institutions and four times as high as four-year, non-profit institutions. Government investigators have unanimously concluded that the Title IV statutory and regulatory scheme, which has standards and controls oriented towards regulating traditional, non-profit institutions of higher education, has been unable to detect or prevent fraud and abuse by unscrupulous proprietary schools. Indeed, the U.S. Senate Permanent Subcommittee on Investigations' recent examination of waste, fraud and abuse in the guaranteed student loan program focused solely on proprietary trade schools because the vast majority of Title IV abuses occur at these schools. See "Abuses in Federal Student Aid Programs", Hearings Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs U.S. Senate, S. Hrg. 101-659, Pt. 2, p. 145, Staff Statement 9/12/90.

This document proposes amendments to the Higher Education Act in order to:

- protect students and provide redress for students already victimized by unscrupulous proprietary trade schools;
- limit participation in federal student aid programs to those proprietary trade schools with proven track records of training students and getting them jobs;
- prevent the taxpayer from further subsidizing fraudulent proprietary trade schools;
- strengthen the American work force by freeing up hundreds of millions of federal aid dollars for use by students attending quality trade schools, colleges and universities.

The document is organized around particular problems concerning proprietary trade schools and proposed solutions, including specific amendments to the Higher Education Act and other relevant statutes.

New Definition for Proprietary Vocational Schools

CURRENT LAW

Current statutory definitions of "eligible institutions" for the purposes of the student loan insurance program include:

(1) "an institution of higher education" (20 U.S.C. §1085(b), which includes public or other non-profit institutions providing a bachelor's degree or program not less than 2 years acceptable for full credit for a bachelor's degree.); and

(2) "a vocational school" (20 U.S.C. §1085(c), which includes a business or trade school, or technical institution or other technical or vocational school which provides "a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations" and which presumably may be public, non-profit or for profit.)

SUGGESTED AMENDMENT

Amend 20 U.S.C. §1085 ["Definitions for student loan insurance program"] by renumbering 20 U.S.C. §1085(c) as §1085(d) and adding a new subsection (c) as follows:

(c) Proprietary vocational school - The term "proprietary vocational school" means a business or trade school, or technical institution, in any State, which -

(1) does not meet the requirement of clause (4) of §1141(a) of this title;

(2) admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit (as determined by the institution under 20 U.S.C. §1091(d)) from the training offered by such institution;

(3) is legally authorized to provide within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations;

(4) has been in existence for 2 years or has been specially accredited by the Secretary as an institution meeting the other requirements of this subsection;

(5) is accredited -

(A) by a nationally recognized accrediting agency or association listed by the Secretary pursuant to this paragraph;

(B) if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Secretary pursuant to this paragraph; and

(C) if the Secretary determines there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by the Secretary and composed of persons specifically qualified to evaluate training provided by schools of that category, which committee shall prescribe the standards of content, scope, and quality which must be met by those schools in order for loans to students attending them to be insurable under this part and shall also determine whether particular schools meet those standards.

For the purpose of this subsection, the Secretary shall publish a list of nationally recognized accrediting agencies or associations and State agencies which the Secretary determines to be reliable authority as to the quality of education or training afforded; and

EXPLANATION

Our proposed amendments relate solely to proprietary vocational schools. We propose a new definition for the student loan program entitled "proprietary vocational school," to be numbered 20 U.S.C. §1085(c). The proposed §1085(c) would alter the current definition of "vocational school" contained in the current §1085(c) by adding the criteria that such school "not meet clause (4) of §1141(a) of this title" -- i.e. not be a public or other non-profit institution.

Throughout this document, all citations to §1085(c) refer to the above-proposed new definition of "proprietary vocational school". (See Problems II, IV, V, VI, VII, VIII, IX and XI).

Problem I. School closings saddling student with heavy financial obligations.

CURRENT LAW	SUGGESTED AMENDMENT	EXPLANATION
No provision regarding school closings exists in current federal statutes or regulations.	Amend 20 U.S.C. §1078-6 "Default reduction program" by adding a new paragraph (e) as follows: (e) Guaranteed student loan credit for borrowers at schools which have closed. (1) Establishment of loan credit program required. The Secretary shall, in accordance with the requirements of this section, establish a loan credit program for borrowers who have one or more loans under Part B of this title [20 U.S.C. §§1071 et seq.] obtained in order to attend and endorsed over to an eligible institution, as defined in 20 U.S.C. §1085, which institution has ceased to provide instruction. Under such credit program, the Secretary shall require all guaranty agencies, notwithstanding the due diligence requirements set forth in 20 U.S.C. §§1078(c)(2)(A) and 1080(d), to: (A) Within ten days of learning that an eligible institution has ceased to provide instruction, stop all loan collection activities, and order all lenders for which it guarantees student loans to stop all loan collection activities, regarding loans obtained in order to attend such institutions; (B) Direct the institution immediately to advise the guaranty agency which borrowers with such loans withdrew, graduated, or were terminated, if any, prior to the date the institution ceased to provide instruction; (C) Notify all borrowers referred to in paragraph B of their right to contest the information provided by the institution; (D) Provide loan cancellation to all borrowers not named in response to paragraph B and to all borrowers whose objection under paragraph C is validated by the guaranty agency under the following criteria: (i) each borrower enrolled or on an approved leave of absence on the date the institution ceased to provide instruction, shall be entitled to cancellation of the entire loan amount; and (ii) each borrower otherwise entitled to a loan refund from the institution, shall be entitled to cancellation of the loan amount as determined by the refund provisions set forth in the enrollment contract and state and federal statutes and regulations; (E). Expeditiously notify the borrower of the cancellation determination pursuant to paragraph D or denial of forgiveness pursuant to paragraphs B and/or C; and	PROBLEM: A rash of proprietary trade school closings over the past three years has left thousands of low-income students unable to complete their programs and yet obligated to repay student loans which the schools received on their behalf. The students may have received no training or certificate of completion, and consequently may not ever have the means to repay the loan. Trade schools that close abruptly also tend to follow a pattern of having failed to make loan refunds owed to students who never actually enrolled or who withdrew prior to program completion. In either case, once a student has defaulted on repayment of a guaranteed student loan, he is barred by federal law from eligibility for all future Title IV student financial aid, including grants and loans. Such students thus find themselves in a double bind: deprived by the school closing of the job training for which they incurred the original loan obligation, they are also barred from receiving the future financial aid necessary for them to acquire the training which would enable them to repay the loan. Adelphi Institute, Inc. (no relation to Adelphi University) case in point. Based in Phoenix, Adelphi Institute had six schools in New York City, as well as schools in Indiana, Michigan, Colorado and California. At its closing in September, 1987, by its own account Adelphi left unpaid student loan refunds of roughly $12 million and several hundred students in attendance. Despite the breadth of the school closing problem and the notoriety it has obtained, the U.S. Education Department ("USED") has done nothing to protect students affected by the closings. SOLUTION: For student-borrowers who have been adversely affected by school closings, the proposed amendments would allow for loan cancellation, re-established financial aid eligibility, and credit record corrections. If the student was enrolled or on a leave of absence at the date of the closing, he would be entitled to cancellation of the full loan amount. If the student was owed a loan refund because he never actually attended classes or withdrew or was terminated prior to the end of a program in which he had enrolled, he would be entitled to cancellation of the appropriate portion of the loan under the refund provisions set forth in the enrollment contract, and state and federal law.

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Problem I. School closings saddling student with heavy financial obligations.

SUGGESTED AMENDMENT CONTINUED

(F) Provide each borrower denied cancellation, in whole or in part, with an opportunity to contest the denial.

Borrowers granted loan cancellation hereunder shall be deemed to have assigned to the United States their right to a loan refund up to the amount of the cancellation, against the institution, its affiliates, and principals. The Secretary of the United States Department of Education shall use all reasonable measures to collect the canceled amount from the institution, its affiliates and principals where appropriate.

(2) Continued or re-established eligibility for student aid
Any borrower whose loan is canceled in whole pursuant to this section shall not be precluded by section 484 [20 U.S.C. §1091] from receiving additional grants, loans or work assistance under this title for which he would be otherwise ineligible on the basis of defaulting on the loan prior to cancellation.

(3) Corrected credit reports
The Secretary shall require each guaranty agency to report to the appropriate credit bureaus:

(A) If the total loan amount has been canceled, that the loan has been canceled in full and that all references to the loan should be removed from the borrower's credit report;

(B) If the loan has been partially canceled, the amount and reason the balance has been reduced.

(4) Retroactivity
This paragraph [§1078-6(c)] shall apply to all loans made to borrowers whose institution ceased to provide instruction on or after January 1, 1986.

Internal Revenue Code amendments

Amend 26 U.S.C. §6402(d) ["Authority to make credits or refunds- collection of debts owed to federal agencies."] [tax offset program] by adding a new subsection (4) as follows:

(4) Any guaranteed student loan debt amount canceled pursuant to [cite H.E.A. amendment, proposed §1078-6(c)] shall not be considered a past-due legally enforceable debt subject to the provisions of this section.

Amend 26 U.S.C. §108(f) ["Income from discharge of indebtedness - student loans"] by adding a new subsection (3) as follows:

EXPLANATION CONTINUED

In all such cases of loan cancellation, the holder of the loan would be required to submit to the relevant credit bureaus a correction to the borrowers' credit report. The Internal Revenue Code would also be amended to reflect that such canceled loan obligations shall neither form the basis for a Federal Tax Refund Offset (of federal income tax refunds or Earned Income Credits), nor be counted as taxable income.

Problem II. Front-loaded tuition liability at proprietary schools.

CURRENT LAW

No current federal statutory provision dictates proprietary trade school refund policies. The U.S. Department of Education's regulations require a pro rata refund policy for each school notified by the Secretary that its default rate exceeds 30 per cent for any fiscal year after 1986, until its rate declines to 30 per cent or less.

SUGGESTED AMENDMENT

(3) Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of discharge or cancellation (in whole or in part) of any student loan pursuant to [cite H.E.A. amendment proposed §1078-(c)].

Amend 20 U.S.C. §1085(c) by adding a new subsection (6) as follows:

(6) has a refund policy which provides for a refund of at least the larger of the amount provided under:

(A) the requirements of applicable State law; or

(B) a pro rata refund, which is calculated by dividing the total clock hours comprising the period of enrollment for which the student has been charged into the number of clockhours remaining to be completed by the student in that period as of the last day of attendance by the student, multiplying that fraction by the total program cost, and subtracting a registration charge in the amount of $100.00.

EXPLANATION

PROBLEM: Proprietary trade school students are often enrolled into programs which they are not able to complete, which fail to provide adequate instruction or equipment, or which train them for jobs that do not exist. Yet students who withdrew from such programs even early in their enrollment find that student loan and grant payments as well as cash payments already made to the school are generally not refundable. Front-loaded tuition liability policies in effect at most proprietary schools mean that these schools keep most of the money even if the student stays only a few weeks. These policies also mean that proprietary schools have no incentive to retain students.

Because of the lag time in compiling and calculating default rates, USED's current sanction of a pro rata refund policy on schools with high default rates may not be imposed until years after the problems that led to the high default rate occurred --perhaps not until the school is about to close. Also, manipulation of default rate calculations has artificially lowered the rates reported, thus allowing some schools with the highest actual default rates to elude the ambit of the regulation.

SOLUTION: Our amendment would add a pro rata refund requirement to the H.E.A. for all proprietary vocational schools.

Problem III. Close relationships between trade schools and lenders.

CURRENT LAW

No federal statute currently authorizes or addresses the "origination" situation described in our proposed amendment. The U.S. Department of Education's regulations permit origination under certain narrow circumstances. See C.F.R. §§682.215, .601. Proposed amendments to these regulations would allow schools to originate loans without restriction. See Federal Register November 20, 1990 p. 48323 et seq.

SUGGESTED AMENDMENT

Amend 20 U.S.C. §1085(d) ["Definition for student loan insurance program - eligible lender"] by adding a new subsection (6) as follows:

(6) Origination.

(A) Definition - 'Origination' as used in this subsection refers to a relationship between a proprietary vocational school, as that term is defined in 20 U.S.C. §1085(c), and a lender in which the school, its employees, officers, agents or affiliates act as an agent for the lender by performing certain functions or responsibilities normally performed by lenders before making student loans. Such functions include, but are not limited to:

(i) providing the borrower with a loan application and/or promissory note;

(ii) verifying the identity of the borrower; or

(iii) completing portions of the loan application and/or promissory note, other than the institutional portions, in whole or in part."

OPTION 1 would add:

(B) Bar on origination relationship with proprietary vocational school. 'Eligible lender' shall not include any entity otherwise eligible (but for this paragraph) which has an origination relationship with a proprietary vocational school. Upon a judicial finding that an otherwise eligible lender has or had such a relationship,

(i) the guarantee on any loans made by such lender for attendance at such proprietary vocational school shall be void;

(ii) any claims made thereon shall not be reimbursed by the guaranty agency or by the Secretary; and

(iii) a borrower may assert as a complete defense to collection of the loan, including collection by a guaranty agency or by the United States, that an unauthorized origination relationship existed between the lender and the school."

OPTION 2 would add:

(B) Origination Agreement required. An 'eligible lender' must have a written agreement with the Secretary in order to allow a proprietary vocational school to originate loans on the lender's behalf. Such agreement shall provide that the lender shall ensure that:

EXPLANATION

PROBLEM: Many trade school student-borrowers never go to a bank to obtain a student loan; the trade school provides the loan applications, often pre-printed with an out-of-state bank's name, and completes all loan application and promissory note paperwork. Any "counseling" to be done explaining borrowers' rights and responsibilities vis a vis student loans is thus left to the school which, due to its own profit-making motivation, has a disincentive to fully inform the student of the obligation he is incurring.

The result is that proprietary trade school students often do not understand that they have incurred a student loan obligation; in-school "counselors" may tell them that "financial aid" will cover their costs, without explaining that financial aid includes loans which have to be repaid. In addition, where out-of-state lenders are involved, trade school students often find communicating with them difficult.

For these reasons, and because proprietary schools have strong incentives to misrepresent to prospective students the nature of the loan obligation, these arrangements (known as "origination relationships") by which the school acts as the bank's agent should be discouraged if not barred.

While the HEA does not explicitly authorize proprietary vocational schools to provide and complete the paperwork for loan applications, USED's regulations have allowed schools to "originate" loans in this manner for some time under certain conditions. These conditions have been breached more often than observed, however; and the Secretary has proposed to loosen the conditions even further.

SOLUTION: We propose two alternative solutions. First, we would amend the HEA to bar proprietary vocational schools from originating loans. Proprietary school students who want student loans could still obtain them independently by going to a local bank, getting a loan application and loan information from the bank, and returning the loan application to the school for completion of the institutional portion only.

In the alternative, we would require lenders that want to have vocational schools originate loans for them to have a separate agreement with the USED Secretary; require the promissory notes for loans originated by the school to contain a "preservation of claims and defenses" clause, similar to that required by the Federal Trade Commission "Holder-in-due-Course Rule", stating that borrowers whose

Problem III. Close relationships between trade schools and lenders.

SUGGESTED AMENDMENT CONTINUED

(i) all promissory notes originated by a proprietary vocational school on behalf of the lender shall contain in bold print a "notice of preservation of claims and defenses" in the following language:

ANY HOLDER OF THIS PROMISSORY NOTE IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE BORROWER COULD ASSERT AGAINST THE SCHOOL WHICH OBTAINED THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Even in the absence of the required "notice of preservation of claims and defenses", borrowers retain their right to assert against the holder of their student loan, including a guaranty agency or by the United States, any claims and defenses which they could assert against the school which originated the loan, upon a showing that the school originated the loan. The fact that the lender is located 25 miles or more from the borrower's residence shall make out a prima facie case that the school originated the loan.

(ii) failure to obtain the required origination agreement with the Secretary or to comply with any terms of such an agreement, including but not limited to subsection (i), shall void the lender's guaranty agreement on any loan originated in violation of this section and shall make any claims filed thereon not reimbursable by the guaranty agency or the Secretary.

(C) The rights set forth in this paragraph [20 U.S.C. §1085(d)(6)] shall be in addition to any other rights the borrower may have under statute, regulation, common law, court order or otherwise, and do not pre-empt the borrower's claims or defenses based on State law or on the Secretary's origination regulations.

EXPLANATION CONTINUED

loans were originated by their trade school may assert against the holder of their loan any claims and defenses they have against the school; require that in the absence of such notice, the lender or other holder be held liable for such claims and defenses if the student shows that the loan was, in fact, originated by a vocational school.

Problem IV. Falsified admissions testing of trade school students.

CURRENT LAW	SUGGESTED AMENDMENT	EXPLANATION
The current federal statute requires that a student admitted to any program on the basis of "ability to benefit" shall, prior to enrollment, pass an independently administered examination approved by the Secretary. 20 U.S.C. §1091(d) as amended by the "Student Default Prevention Initiative Act of 1990," a subtitle of OBRA enacted in November 1990.	Amend 20 U.S.C. §1091(d) as follows [new language underlined]: "In order for a student who is admitted to a proprietary vocational school as that term is defined in 20 U.S.C. §1085(c) or a proprietary institution of higher education as that term is defined in 20 U.S.C. §1088(b) on the basis of ability to benefit from the education or training offered to be eligible for any grant, loan, or work assistance under this title, the student shall, prior to enrollment, take the General Educational Development ("GED") test, or its equivalent only in States that do not administer the GED, administered by a State or local government educational agency and attain such score on the test as is determined by the appropriate State educational agency to be adequate to demonstrate ability to benefit from the program in which the student seeks to enroll."	PROBLEM: Proprietary trade schools have repeatedly been found to enroll students who lack the ability to complete or benefit from their programs. The primary motivation of such schools seems to be maximizing their profits rather than ensuring that their enrollees truly have the ability to handle the programs in which they enrolled. Often the schools' admissions recruiters, paid on a commission basis, have a greater incentive to maximize the number of students enrolled rather than to assure the abilities of such enrollees. We strongly support the concept of independent testing embodied in the OBRA amendments, but believe the current provision is too broadly written in that it: (a) includes public and not-for-profit colleges, categories of schools about which there have been no findings of inappropriate admissions; and (b) allows wide latitude to proprietary schools to choose from a variety of tests the content of which and answers to which may be publicly available, to choose a test administrator who may not be truly independent or neutral, and to set their own passing scores. SOLUTION: Our proposal would limit the independent testing requirement to proprietary vocational schools due to the longstanding history of abuses by this sector. See, e.g., "Proprietary Schools: The Regulatory Structure", by Margot A. Schenet, Congressional Research Service report for Congress, August 31, 1990, p. 4 et seq. In order to assure security of the testing and more reasonable cut-off scores, our amendments would require that the General Educational Development ("GED") test, or its equivalent in states that do not administer the GED, be the one given and that "passing" scores be set by the State educational agency which already sets the GED equivalency diploma pass rates. For "ability to benefit" purposes, such rates might be lower than usual equivalency diploma passing rates. In addition to the security and uniformity of the GED test administration and grading system, prospective students might even attain a passing score sufficient to get an equivalency diploma, thus acquiring a credential which would expand their job, career and educational opportunities.

Problem V. Financially unstable trade schools certified to participate in Title IV.

CURRENT LAW

Currently, federal statutes set no specific standards for USED to follow in certifying proprietary schools as sufficiently financially responsible to qualify for Title IV eligibility. Although the U.S. Department of Education's regulations set forth standards, they also allow for a waiver at the discretion of the Secretary. 34 C.F.R. §668.13.

SUGGESTED AMENDMENT

Amend 20 U.S.C. §1085(c) ["Proprietary vocational school"] by adding a new subsection (7) as follows:

"(7) Has sufficient assets for all the following:

(A) Providing the educational services stated in its official publications;

(B) Complying with all the requirements of the Higher Education Act and regulations promulgated thereunder including, but not limited to, making timely student loan refunds. In conjunction with an application for certification and recertification, a proprietary vocational school shall submit to the Secretary an audited financial statement certified by a certified public accountant. Such statement shall address at minimum the items set forth below. A proprietary vocational school shall be deemed to have insufficient assets under that subsection under any of the following conditions:

(i) Under generally accepted accounting principles, the school has had operating losses in the two most recent years or had a deficit of net worth for its latest fiscal year. For purposes of this section, a deficit net worth occurs when the school's liabilities exceed its assets.

(ii) Under generally accepted accounting principles, the school had a ratio of current assets to current liabilities of less than 1.25 to 1 at the end of its latest fiscal year.

(iii) Under a fund accounting system, the school's unrestricted current or operating fund reflects sustained material deficits over at least its two most recent fiscal years.

(iv) The school is not in compliance either with the Secretary's regulations or with any existing statutes relating to the requirements for maintaining sufficient funds to cover all operating expenses.

(v) The school, its owners, chief executive officer, or any employee involved in administration of Title IV funds has been convicted of, or pled nolo contendere or guilty to, a crime involving fraud, or misappropriation or misuse of funds, or falsified business records.

[Analogous amendments to 20 U.S.C. §1088(b)]

EXPLANATION

PROBLEM: The U.S. Department of Education Inspector General's Office has found that USED's process for certifying the financial capability of proprietary schools to participate in Title IV funding fails to protect adequately both students and the federal government. The Inspector General's September 1990 Audit (Control No. 11-80160, entitled "Financial Analysis Certification Process Not Adequate to Protect Students and Government") found that USED certified practically all schools that applied to participate in Title IV programs and documented instances of schools certified despite negative net worth, net losses, and assets of only one-third their liabilities. The Inspector General found, in fact, that USED emphasized "a certification production quota rather than ... the careful screening of applications" (Audit p. 13).

When these unstable schools close -- as 167 schools did over the two and one-half fiscal years examined by auditors -- students are left unable to collect tuition and student loan refunds owed to them. The Inspector General estimated that the 167 schools which closed during the period he examined, left $30 million in federal student financial aid "at risk." We believe the potential loss is far greater.

SOLUTION: The proposed amendments would mandate that the Secretary of USED certify as eligible only those proprietary schools that have sufficient assets to, inter alia, provide the services stated in their official publications and comply with the requirements of the HEA and regulations promulgated thereunder, including the requirement of making timely student loan refunds. The amendments would require that, in conjunction with an application for certification or recertification, a proprietary vocational school would submit audited financial statements certified by a certified public accountant. The amendments would deem a proprietary school not financially responsible under certain conditions, such as showing a deficit net worth.

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Problem VI. Poor-performing trade schools certified to participate in Title IV.

CURRENT LAW	SUGGESTED AMENDMENT	EXPLANATION
Currently, the HEA does not require audited statements concerning proprietary school completion and placement rates, nor does it set any student completion or placement thresholds for Title IV eligibility.	Amend 20 U.S.C. §1085(c) ["Proprietary Vocational School"] by adding a new subsection (8): (8) submits to the Secretary, in conjunction with an application for certification and recertification, an audited statement certified by an independent auditor reflecting the school's completion rate and job placement rate. Such term does not include an institution whose completion rate average or placement rate average for the 2 most recent calendar years at the time of the application for certification and recertification is less than 60 percent. For the purpose of this subsection, completion rate means the percentage of students who, in the most recent calendar year, successfully completed a program in the amount of time normally required to complete the program; placement rate means the percentage of students who, in the most recent calendar year, gained employment lasting for at least four months in the field for which they were trained within one year of their completing the program. [Analogous amendments to 20 U.S.C. §1088(b)]	PROBLEM: Title IV student financial aid programs provide a huge source of federal money for proprietary trade schools without controls to ensure that the schools provide quality education and training. Federal government investigators who have examined the existing system for regulating proprietary trade schools have unanimously concluded that it protects neither students nor federal funds. Currently, no governmental body evaluates the quality of training and education at proprietary trade schools. This responsibility is statutorily delegated to private accrediting agencies. But accrediting agencies, which are organizations largely composed of and often dominated by school operators, have failed to maintain minimum levels of quality in proprietary trade schools. This lack of effective control has been easily exploited by unscrupulous trade school owners. Access to student aid programs should be limited to proprietary trade schools with proven track records of getting students trained and into the work force; proprietary schools should maintain adequate performance in order to continue receiving federal money. SOLUTION: Job training and placement, the stated goals of proprietary trade schools, naturally lend themselves to objective standards and measures. Completion and placement rates are logical indicators of whether such schools train their students effectively and provide skills that are in demand in the private job market. The proposed amendments would make proprietary trade schools' eligibility to participate in student aid programs contingent on meeting established completion and placement rates. Verification of whether a trade school meets the required standards should be integrated into the process by which the Department of Education certifies the schools' eligibility for participation in Title IV programs. The amendments would require that, in conjunction with an application for certification or recertification, a proprietary trade school would submit an audited statement certified by an independent auditor reflecting the school's completion and placement rates.

Problem VII. New trade school owners and branches evading Title IV eligibility requirements.

CURRENT LAW

The pertinent statutes, 20 U.S.C. §§1085(c)(3) and 1088(b)(5), currently require that a trade school be in existence for 2 years before becoming eligible for Title IV aid. The U.S. Department of Education's regulations similarly require that a change in school ownership triggers a new Title IV eligibility determination. Both requirements have been evaded however by proprietary schools: the former by branching, the latter by loopholes in USED's regulations and enforcement.

SUGGESTED AMENDMENTS

Amend 20 U.S.C. §1085(c) ["Proprietary Vocational School"] by adding the following:

For the purpose of this subsection [§1085(c)], a branch of an eligible proprietary vocational school or an eligible proprietary vocational school that changes ownership resulting in a change in control shall not be considered the same institution as the eligible proprietary vocational school and shall be considered a new institution for the purpose of establishing eligibility. For the purpose of this subsection [§1085(c)], a change in ownership of an institution that results in a change of control means any action by which a person or corporation obtains new authority to control the actions of that institution. That action may include, but is not limited to:

(i) the sale of the institution or of the majority of its assets;

(ii) the transfer of the controlling interest of stock of the institution or its parent corporation;

(iii) the merger of two or more eligible institutions;

(iv) the division of one or more institutions into two or more institutions;

(v) the transfer of the controlling interest of stock of the institutions to its parent corporation; or

(vi) the transfer of the liabilities of the institution to its parent corporation.

EXPLANATION

PROBLEM: Scrutinizing new trade schools before they become eligible does not solve the problem of eligible trade schools that are purchased by new owners or that create new branch schools. In both situations, contrary to the statutory provision that requires schools to be in existence for 2 years prior to eligibility for Title IV aid, new trade schools have been afforded immediate eligibility based upon the parent school's eligibility. This automatic eligibility has resulted in serious abuses of Title IV funds. Branch schools have been set up with grossly inadequate resources, often in states far away from the parent schools, teaching subjects entirely different from those taught at the parent school. Rapid expansions by new owners or by branching have often led to sudden collapse - after collection of huge amounts of Title IV funds.

USED's Division of Eligibility and Certification and the Inspector General have identified circumvention of the two year rule as a primary concern. (USED Inspector General Management Improvement Report No. 90-13, Feb. 20, 1990, "Unrestricted Branching is Detrimental to Students and Taxpayers"). In order to assure that schools under new ownership and new branches will provide quality education and training, they should, at minimum, be required to meet the "two years in existence" requirement as well as the performance standards for eligibility described in the "Solution" to Problem V.

SOLUTION: Schools that change ownership and newly created branches of eligible schools should be treated the same as schools seeking eligibility for the first time. The proposed amendments would revise the Act so that the eligibility of trade schools purchased by new owners and of new branches of currently eligible parent schools would be contingent on meeting the same "two years in existence" requirement and same completion and placement rates that a new trade school must meet.

Problem VIII. Meaningless Accreditation Standards.

CURRENT LAW

The current federal statutory authority concerning accreditation is scant. For example, 20 U.S.C. §1141(a) simply states that "the Secretary shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered." Currently, 20 U.S.C. §§1085(a) and 1088(a) provide that "an institution may not be certified or recertified" as Title IV-eligible institution if it has lost its institutional accreditation during the preceding 2 years unless such accreditation has been restored or the Secretary is otherwise satisfied with the institution's academic integrity.

SUGGESTED AMENDMENT

Amend 20 U.S.C. §1085(c) ["Proprietary Vocational school"] after the last sentence of subsection (9) by adding:

For the purpose of this subsection, the Secretary shall not list an accrediting agency unless such agency evaluates separately each branch of an institution seeking accreditation; conducts annual, on-sight unannounced visits of its accredited institutions and each of their branches; requires that none of the members of the accrediting agencies' accreditation decision-making body are affiliated with schools accredited by the agency; and revokes the accreditation of or denies accreditation to any school which has had its state license withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months by any state in which the school operated, or which ceased operation voluntarily in any state under an order to show cause or suspension order from any State agency during the preceding 24 months.

Amend subsection (a) ["Impact of loss of accreditation"] by deleting:

unless –
(A) such accreditation has been restored by the same accrediting agency which had accredited it prior to the withdrawal, revocation, or termination; or

(B) the institution has demonstrated its academic integrity to the satisfaction of the Secretary in accordance with §1201(a)(5)(A) or (B) of this Act [20 U.S.C. §1141(a)(5)(A) or (B)].

Amend 20 U.S.C. §1088(b) ["Proprietary Institution of Higher Education"] after:

"For the purpose of this subsection, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which he determines to be a reliable authority as to the quality of training offered."

by adding the following:

"For the purpose of this subsection, the Secretary shall not list an accrediting agency unless such agency evaluates separately each branch of an institution seeking accreditation; conducts annual, on-sight, unannounced visits of its accredited institutions and each of their branches; requires that none of the members of the accrediting agencies' accreditation decision-making body are affiliated with institutions accredited by the agency; and revokes the accreditation of or denies accreditation to any institution which has had its state license withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months by any

EXPLANATION

PROBLEM: Experience has taught that relying on accreditation as an indicator of proprietary trade school quality is totally unwarranted. Legal Services offices across the country are currently handling serious complaints against scores of different proprietary trade schools, all of which are accredited and none of which provide training even remotely like the quality promised.

The accreditation process is a regulatory scheme that evolved to suit the needs of traditional, non-profit institutions of higher education. Accreditation operates essentially as peer-review. Accreditors accept data provided by schools without independent verification. On-sight visits are usually announced. These lax procedures have proved inadequate to ensure quality services by for-profit trade schools.

In many instances, accreditors grant approval or fail to impose sanctions against proprietary trade schools even though they are subject to state regulatory fines, disallowances, and disciplinary actions. Even when accrediting agencies attempt to discipline "problem schools", their actions are not effective because proprietary schools routinely shop for accreditors. If a school's accreditation is terminated by one agency, the school can merely find another. Or, a school can simply gain accreditation from more than one agency, and thus maintain eligibility for federal student aid funds in the event that an agency terminates the school's accreditation. HEA amendments passed in 1989 address the accreditation shopping and dual accreditation problems by providing that a school may not be eligible for Title IV funds if the institution had its accreditation revoked within the preceding 24 months. The new provision creates exceptions, however, that allow the Secretary to second-guess a revocation or an agency to change its mind, thereby threatening to swallow up the rule.

The failure of the proprietary school accrediting system is not surprising in view of the cozy relationship between the accreditors and the accredited. For example, an accrediting agency is free to allow its accreditation decision-making body to be dominated by schools accredited by the agency, thus creating a blatant conflict-of-interest.

SOLUTION: The proposed amendments to the statute define certain minimum requirements to help ensure that proprietary trade school accrediting agencies live up to their responsibilities and accredit only schools that provide quality education and training. Specifically, the proposed amendments require accrediting agencies to evaluate each branch of

Problem VIII. Meaningless Accreditation Standards.

SUGGESTED AMENDMENT CONTINUED	EXPLANATION CONTINUED
state in which the institution operated, or which ceased operation voluntarily in any state under a show cause or suspension order from any state agency during the preceding 24 months."	a school separately; to conduct annual, unannounced on-sight visits of their accredited schools and each of the school's branches; to maintain independent accreditation decision-making bodies; and to terminate accreditation if a school's license has been revoked in any state in which the school operates. The proposed amendments also close the loopholes in the 1989 legislation that addressed the dual accreditation problem.

Problem IX. Lack of remedies for victimized trade school students.

CURRENT LAW	SUGGESTED AMENDMENT	EXPLANATION
Currently, the HEA is silent as to whether private parties or only the Secretary of USED may raise claims for violations of the Act or regulations promulgated thereunder.	Amend 20 U.S.C. §1070 by adding a new subsection (c) as follows: "(c) Private right of action recognized - A student of a proprietary school as that term is defined in 20 U.S.C. §1085(c) or a proprietary institution of higher education as that term is defined in 20 U.S.C. §1088(b) who is injured by a violation of the Higher Education Act of 1965, amendments thereto, or regulations promulgated thereunder may bring an action, in a court of appropriate jurisdiction, against a proprietary vocational school or a proprietary institution of higher education or its owners or operators; an eligible lender as that term is defined in 20 U.S.C. §1085(d); a guaranty agency as that term is defined in 20 U.S.C. §1085(j); a secondary market; and the Secretary. Such action may be maintained for injunctive relief and actual damages. The court may, in its discretion, award treble damages for wilful violations. The court may also award reasonable attorneys' fees to a prevailing plaintiff."	**PROBLEM:** USED's enforcement of the H.E.A. and of its own regulations has been extremely lax. Whether from inadequate resources, failure of will, or influence by trade schools or accreditors, lack of enforcement makes meaningless all the paper requirements and "reforms" enacted. Even when USED does take action against trade schools, lenders, or guaranty agencies, the remedy is merely a sanction against the school, lender, or guarantor affording no relief to individual students. Student advocates have raised H.E.A. violations in litigation and have asserted an implied private right of action to enforce the H.E.A. Results have been mixed, at best; some courts have held that only USED may raise claims under the H.E.A. **SOLUTION:** Our amendment would add an explicit private right of action to supplement USED's powers to bring actions against trade schools, lenders, guarantors, and secondary markets to supplement USED's powers to bring actions for statutory and regulatory violations. The amendment would also provide an explicit cause of action against the Secretary for such violations. Such a provision, present in many other statutes, would allow aggrieved students to act as "private attorneys general", thereby expanding enforcement of the H.E.A. and affording victimized students some real relief. Creating an explicit private right of action would also have a deterrent effect: otherwise unscrupulous or reckless schools, lenders, etc. would be more careful about complying with the law knowing that a significant private enforcement tool had been added to the less utilized governmental ones.

Problem X. Students not informed of their loan deferment rights.

CURRENT LAW

The HEA currently provides for deferments of student loan repayment obligations under certain circumstances. See 20 U.S.C. §1078(b)(1)(M). The only statutory requirement concerning borrower notification of these deferment rights is that they be contained in the loan promissory note. 20 U.S.C. §1077(a)(2)(C).

SUGGESTED AMENDMENT

Amend 20 U.S.C. §1083(d)["Student loan information by eligible lenders - separate statement"] by adding [new language underlined]:

(d) Separate statements – Each eligible lender shall, in addition to the information required by subsections (a) and (b) of this section -

(1) at the time such lender notifies a borrower of approval of a loan which is insured or guaranteed under this part, provide the borrower with a separate paper which summarizes (in plain English) the rights and responsibilities of the borrower with respect to the loan, including a statement of the borrower's deferment rights pursuant to 20 U.S.C. §1077(a) (2)(C) and (a)(5), a statement of the consequences of defaulting on the loan and a statement that each borrower who defaults will be reported to a credit bureau; and

(2) at the time of each communication to the borrower attempted from at or prior to the date of initiation of repayment status up to and including default, provide the borrower with a separate paper which summarizes (in plain English) the borrower's deferment rights pursuant to 20 U.S.C. §1077(a)(2)(C) and (a)(5).

Amend 20 U.S.C. §1077(a) ["Eligibility of student borrowers and terms of federally insured student loans - List of requirements"] by adding a new subsection (5) as follows:

(5) the deferments set forth in §1077(a) (2)(C) are made available to all borrowers retroactive to the date of delinquency upon the borrower's showing that he would have been eligible therefore on that date if he had timely applied. Any borrower who receives a retroactive deferment hereunder shall be removed from default status and shall not be precluded by §1091 of this title from receiving additional Title IV financial aid (for which he or she is otherwise eligible) on the basis of defaulting on the loan prior to receiving a deferment. The lender who grants the borrower a retroactive deferment hereunder shall promptly notify of the change in loan status all credit bureaus to which information about the borrower has been provided.

Amend 20 U.S.C. §1078(b)(1)["Insurance program agreements to qualify loans for interest subsidies - Requirements of insurance program"] by adding new subsections (W) and (X) as follows:

(W) requires all holders of the loan, including lenders and State or nonprofit private guaranty agencies, at each communication with the borrower attempted from at or prior to the date of initiation of repayment status up to and

EXPLANATION

PROBLEM: The only statutory requirement concerning notification of student loan deferment rights is that they be contained in the loan promissory note. Borrowers are often unaware of these deferment rights. Thus, borrowers who are entitled to a postponement in repaying their loans may unwittingly slip into default, thereby barring themselves from future Title IV eligibility and damaging their credit ratings.

SOLUTION: Our amendments would require lenders and guarantors periodically to notify all student borrowers of their deferment rights. It would also make such deferments available retroactive to the date of delinquency, upon the borrower's showing that he would have been so entitled on that date if he had timely applied. In order to fully clear the borrower's record, obtaining a retroactive deferment would remove the borrower's "default" status and reestablish her eligibility for federal financial aid.

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Problem X. Students not informed of their loan deferment rights.

SUGGESTED AMENDMENTS CONTINUED

including default to provide the borrower with a separate paper which summarizes (in plain English) the borrower's deferment rights pursuant to 20 U.S.C. §1077(a)(2)(C) and (a)(5) and 20 U.S.C. §1078(b)(1)(M) and (b)(1)(X); and

(X) requires that deferments set forth in 20 U.S.C. §1078(b)(1)(M) are made available to all borrowers retroactive to the date of delinquency upon the borrower's showing that she would have been eligible therefore on that date if she had timely applied. Any borrower who receives a retroactive deferment hereunder shall be removed from default status and shall not be precluded by §1091 of this title from receiving additional Title IV financial aid (for which she is otherwise eligible) on the basis of defaulting on the loan prior to receiving a deferment. The lender, guaranty agency or other holder of the loan who grants the borrower a retroactive deferment hereunder shall promptly notify of the change in loan status all credit bureaus to which information about the borrower has been provided.

Problem XI. Tax refund offset used to collect disputed loan debts involving disreputable proprietary trade schools.

CURRENT LAW	SUGGESTED AMENDMENT	EXPLANATION
Current law permits USED to certify to the IRS any student loans that are allegedly "past due" and "legally enforceable." 26 U.S.C. §6402(d).	Amend Internal Revenue Code 26 U.S.C. §6402(d) ["Authority to make credits or refunds - collection of debts owed to federal agencies"] by adding a new subsection (5) [after new subsection (4) added by Problem I solution supra.] as follows: (5) Any guaranteed student loan debt attributable to enrollment in a proprietary vocational school, as defined in 20 U.S.C. §1085(c), which is also determined to be a "problem school" shall not be considered a past-due legally enforceable debt subject to the provisions of this section. For the purposes of this subsection, problem schools shall include, but not be limited to, proprietary vocational schools which: (A) have had their accreditation or State authorization to operate revoked or suspended; (B) have had an administrative or judicial action against them commenced by a government agency including, but not limited to, the United States Department of Justice, United States Department of Education, a State licensing body or State Attorney General; or (C) have a class action lawsuit certified or class action judgment against them.	**PROBLEM:** Under the tax refund offset program, USED certifies to the IRS student loans that are allegedly "past due" and "legally enforceable". The IRS then withholds the taxpayer/student loan borrowers' federal income tax refund and Earned Income Credit due, if any, and turns them over to USED. Such alleged debts are usually pre-judgment and often the subject of dispute by the debtor. Current law allows USED to consider debtor objections, but does not require USED to refrain from sending the IRS alleged debts involving problem schools. Thus, USED sends to the IRS for offset alleged debts involving proprietary trade schools against which USED may even have administrative action pending, which may have closed, and which may have had their accreditation or State license withdrawn. Borrowers find it virtually impossible to stay USED or the IRS from using the tax refund offset process, even where there is a question as to whether the borrower has a defense to collection of the alleged debt. **SOLUTION:** Amend the Internal Revenue Code to exclude from the tax refund offset program alleged student loan debts involving certain categories of proprietary vocational schools proven to be "problem schools".

Mr. **Andrews**. You're welcome. And we look forward to that subsequent submission.

Our panel will conclude with Mr. Blair. Good afternoon, Mr. Blair.

Mr. **Blair**. Mr. Chairman and member of the committee, thank you. I'm President of the National Association of Trade and Technical Schools. Today I'm here representing not only NATTS, but also the Association of Independent Colleges and Schools. NATTS and AICS are the Nation's two largest organizations that represent private career colleges and schools. Together, we represent 2,200 institutions that are educating nearly 1.5 million students in 130 different career specific fields.

Clearly, for student aid programs to continue to fulfill their mission, we must demonstrate to the American people the effectiveness of the Federal programs and restore their confidence in the integrity of these programs.

Three years ago, Mr. Ford challenged this sector to clean up its act. Attached to my written testimony is a copy of a detailed report card which outlines the actions NATTS and AICS have already taken. We have a record of effectiveness and reform.

While we can by no means assume that all the problems have been solved, it is also essential to recognize that very real progress has been made. NATTS and AICS have undertaken numerous rigorous reform efforts to address the most common criticisms of private career colleges and schools and its system of accreditation.

These criticisms include that nothing is being done about bad schools, that there is little or no oversight of institutions or programs, that there is no consumer protection to safeguard the interests of students and taxpayers, and nothing is being done to reduce student loan defaults. Myths, lack of awareness or political expediency have enhanced these criticisms.

Most people simply do not realize, or choose to ignore, that the process has been improved and that very dramatic changes have been put into place by associations such as NATTS and AICS. Actions by our associations and accrediting commissions and legislative and regulatory reforms that we have proposed and supported have helped reduce student loan defaults and abuses in the student aid programs.

Since 1988, for example, 13 out of every 100 NATTS and AICS schools reviewed lost their accreditation. Another 249 closed their doors, for a total of 433 schools that are no longer accredited by NATTS and AICS.

Our associations have been willing to go to court to have accreditation removed. Since 1988, NATTS and AICS have fought court cases against 19 schools at a cost of more than a million dollars in legal and related fees.

NATTS and AICS have also increased our oversight of institutions, tightened our standards of accreditation, initiated rigorous programs to dissuade institutions from applying for accreditation in the first place.

Our much stronger guidelines have addressed such critical issues as recruiting practices, student refunds, admissions testing and branching. We have also developed rapid response and fact finding teams to visit schools with reported problems. We follow up on student complaints as well.

NATTS and AICS have implemented aggressive and successful student loan default reduction programs. In addition, NATTS and AICS have supported strong legislative reform proposals in the Congress. For example, we have backed bills dealing with student loan default reduction, equitable student refunds, postsecondary graduation and placement rate disclosure, and measures to prevent accreditation jumping.

Despite these advances, NATTS and AICS understand that additional reforms are needed. We have submitted to your committee a comprehensive reauthorization proposal. It contains reform provisions that would help bring us the rest of the way.

The most important component of our reform package would be to clarify the unique oversight roles and responsibilities of each of the members of the so-called triad. As you know, the triad consists of accrediting bodies, State regulatory bodies and the Federal Government.

We believe that we must clarify these responsibilities and strengthen the powers of each member needs to carry out and establish expected outcome measurements expected of each of those components. Through the changes we advocate, accrediting bodies could better evaluate the quality of education, States could better monitor business practices and protect consumers, and the Federal Government could do a better job in determining institutional eligibility for Federal student aid.

Each member of the triad must rely upon the other players to meet their responsibilities. Consequently, our plan also contains standards by which all members of the triad could be evaluated and held responsible. It would also improve communication between the triad members and, where appropriate, the guaranteed loan agencies.

I firmly believe that by adopting these additional rigorous but fair reforms we can ensure that taxpayers' dollars are well spent, and only institutions that provide a quality education are eligible to participate in the Federal student aid programs.

I would like to close by briefly mentioning what we think should be some additional guiding principles for reauthorization. We believe that the changes you make in financial aid programs must recognize the vital role they play in determining the quality of this Nation's work force.

Private career colleges and schools are an important element in the education of America's work force. They provide the type of job specific technical education that American business demand and our economy needs to remain competitive in a global marketplace.

I urge the Congress to remember that the Federal student aid programs must continue to foster the great diversity of opportunities that our pluralistic system of postsecondary education offers.

I also want to emphasize that Congress should not discriminate between programs of different lengths. Some people advocate barring students enrolled in short-term programs from eligibility in student financial aid programs, but many career specific educational programs do not require 1 year of schooling, let alone four. And many students simply can not afford to be out of the work force for a long period of time.

It would be counterproductive to make it more difficult for these students to participate in the program that is best for them.

For 25 years, the Higher Education Act has opened doors of opportunity for millions of Americans. The important decisions you make in the months ahead should ensure that those doors remain open for the next generation of students, and they should help build the world class work force our economy needs to thrive in the 1990s and the twenty-first century.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Stephen J. Blair follows:]

Testimony Before the
Subcommittee on Postsecondary Education
Committee on Education and Labor
U.S. House of Representatives

by

Stephen J. Blair, President
National Association of Trade and Technical Schools

May 21, 1991
9:30 a.m.
2175 Rayburn House Office Building
Washington, D.C.

Mr. Chairman and members of the Subcommittee. I am the President of the National Association of Trade and Technical Schools (NATTS). Today I am here representing not only NATTS, but also the Association of Independent Colleges and Schools (AICS). NATTS and AICS are the nation's two largest organizations that represent private career colleges and schools. Together we represent 2,200 institutions that are educating nearly 1.5 million students in 130 different career-specific fields. I appreciate this opportunity to share my thoughts with you as you consider the reauthorization of the Higher Education Act.

I believe it is especially appropriate that you are taking this morning to focus on the need to protect the integrity of federal student financial assistance programs. Clearly, for student aid programs to continue to fulfill their mission, we must demonstrate to the American people the effectiveness of the federal programs and restore their confidence in the integrity of the programs.

This morning I would like to briefly outline our associations' efforts to improve the quality of education offered at our schools and reducing problems surrounding student aid programs. Attached to my written testimony is a copy of a detailed "Report Card," which outlines the actions NATTS and AICS have already taken.

A RECORD OF EFFECTIVENESS AND REFORM

While we can by no means assume that all the problems have been solved, it is also essential to recognize the very real progress that has been made. For the last several years, NATTS and AICS have undertaken numerous rigorous reform efforts to address the most common criticisms of private career schools and its system of accreditation. These criticisms include:

1) nothing is being done about problem schools;
2) there is little or no oversight of institutions or programs;
3) there is no consumer protection to safeguard the interests of students or taxpayers; and
4) nothing is being done to reduce student loan defaults.

Myths, lack of awareness, or political expediency have enhanced these criticisms. Most people simply do not realize -- or choose to ignore -- that the process has been improved and that very dramatic changes have been put into place by associations such as NATTS and AICS.

Actions by our associations, our accrediting commissions, and legislative and regulatory reforms that we have proposed and supported have helped reduce student loan defaults and abuse of student aid programs.

Since 1988, for example, 13 out of every 100 NATTS and AICS schools reviewed lost their accreditation. Another 249 closed their doors, for a total of 433 schools that are no longer accredited by NATTS or AICS. Most of these schools couldn't meet our standards for curricula, financial operations or school management.

Our associations have even been willing to go to court to have accrediting removed. Since 1988, NATTS and AICS have fought court cases against 19 schools at a cost of more than $1 million in legal and related fees.

NATTS and AICS have also increased our oversight of institutions, tightened our standards of accreditation, and initiated rigorous programs to dissuade institutions from applying for accreditation in the first place. Our much stronger guidelines have addressed such critical issues as recruiting practices, student refunds, admissions testing, and branching.

We have also developed rapid-response and fact-finding teams to visit schools with reported problems. We follow up on student complaints as well.

NATTS and AICS have implemented aggressive and successful student loan default reduction programs. In addition, NATTS and AICS have supported strong legislative reform proposals in Congress. For example, we have backed bills dealing with student loan default reduction, equitable student refunds, postsecondary graduation and placement rate disclosure, and measures to prevent accreditation jumping.

PROPOSALS FOR ADDITIONAL REFORMS

Despite these advances, NATTS and AICS understand that additional reforms are needed. We have submitted to your Committee a comprehensive reauthorization proposal. It contains reform provisions that would help bring us the rest of the way.

The most important component of our reform package would clarify the unique oversight roles and responsibilities of each member of the so-called "triad." As you know, the "triad" consists of the accrediting bodies, states regulatory bodies, and the federal government.

We believe we must clarify these responsibilities and strengthen the powers each member needs to carry them out and establish expected outcome measures. Through the changes we advocate, accrediting bodies could better evaluate the quality of education, states could better monitor business practices and protect consumers, and the federal government could better determine institutional eligibility for federal student aid.

Each member of the "triad" must rely on the other players to meet their responsibilities. Consequently, our plan also contains standards by which all members of the triad could be evaluated and held responsible. It would also improve communication between triad members and, where appropriate, loan guaranty agencies.

I firmly believe that by adopting these additional rigorous, but fair, reforms we can ensure that taxpayers dollars are well spent and only institutions that provide a quality education are eligible to participate in student aid programs.

REAUTHORIZATION PRIORITIES

I would like to close by briefly mentioning what we think should be some additional guiding principles for the reauthorization of the Higher Education Act.

We believe the changes you make in financial aid programs must recognize the vital role they play in determining the quality of the nation's workforce. They should also recognize the impact they have on giving millions of Americans the chance to achieve the American dream.

Private career colleges and schools are an important element in the education of the American workforce. They provide the type of job-specific, technical education that American businesses demand and our economy needs to remain competitive in the global marketplace.

I urge Congress to remember that federal student aid programs must continue to foster the great diversity of opportunities that our pluralistic system of postsecondary education offers today. Respecting the great diversity of kinds of institutions and kinds of programs offered, I also want to emphasize that Congress should not discriminate between programs of different lengths. Some people advocate barring students enrolled in short-term programs from eligibility in student aid programs. But many career-specific educational programs do not require one year of schooling, let alone four. And many students simply cannot afford to be out of the workforce for a long period of time. It would be counterproductive to make it more difficult for these students to participate in the program that is best for them.

For 25 years, the Higher Education Act has opened doors of opportunities for millions of Americans. The important decisions you make in the months ahead should ensure that those doors remain open for the next generation of students. And they should help build the world-class workforce our economy needs to thrive in the 1990s and the 21st century.

Thank you.

# # #

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REPORT CARD:

ACTIONS BY THE ASSOCIATION OF INDEPENDENT COLLEGES AND SCHOOLS AND THE NATIONAL ASSOCIATION OF TRADE AND TECHNICAL SCHOOLS TO IMPROVE THE EFFECTIVENESS OF PRIVATE CAREER SCHOOLS AND COLLEGES AND REDUCE PROBLEMS WITH THE ADMINISTRATION OF FEDERAL FINANCIAL AID PROGRAMS

1988-1991

Washington, D.C.
May 1991

The Association of Independent Colleges and Schools (AICS) and the National Association of Trade and Technical Schools (NATTS) have been, are currently, and will remain wholly committed to improving the quality of postsecondary education and as a result increasing public confidence. Achieving this confidence requires criminal prosecution of those engaged in fraudulent activities, whether they be schools, colleges, universities, students, or financial institutions.

Any institution that engages in fraudulent practices unfortunately brings into question the quality of postsecondary private career institutions, which provide over one-half of the skilled workers entering the workforce each year.

The most common criticisms of private career schools and colleges are:

I. Nothing is being done about the "bad apples."

II. There is no oversight of institutions or programs or, if there is any, it is woefully inadequate.

III. There is no consumer protection to safeguard the interests of students and taxpayers.

IV. Nothing is being done to reduce student loan defaults.

In the past three years, myths, a lack of awareness, or political expediency have enhanced these perceived problems. Most people do not realize that the process has changed and that organizations such as AICS and NATTS have a history of ever-increasing effectiveness.

For many years, actions by these two associations, their accrediting commissions, and legislative and regulatory reforms proposed and supported by these associations have helped substantially to improve the quality of education and reduce student loan defaults and abuse of student aid programs.

In 1989, Rep. William Ford (D-MI), now Chairman of the House Education and Labor Committee, asked us to take the necessary actions to instill confidence in private career schools. In discussions with other key Members of Congress, it became clear that our associations and their accrediting commissions were expected to take the lead in identifying "bad apples," eliminating the second-rate and shoddy education that occurs in a minority of schools, and reducing student loan defaults.

The following is a report card of decisive steps AICS and NATTS have taken over the past several years to address the congressional and public concerns:

I. Weeding out the "bad apples"

- Accrediting Commission aggressively removed accreditation from institutions not meeting accreditation standards.
  - From January 1988 until 1991, of the institutions accredited by AICS and/or NATTS, 433 schools were either removed from the accredited list by the Accrediting Commission, voluntarily withdrew (often as a result of Commission action), or closed (See Attachment #1);
  - In the last three years, an average 13 of every 100 accredited schools reviewed lost their accreditation.
- Accrediting Commission aggressively pursued court actions to uphold integrity of accreditation.
  - AICS and NATTS are dedicated to the integrity of the accreditation process and ensuring quality education. They are even willing to go to court to have accreditation removed when necessary. Since 1988, nineteen court cases have been fought by the AICS and NATTS Accrediting Commissions at a cost of more than $1 million in legal and related fees. Attached are examples of court cases undertaken by NATTS and AICS to uphold Commission judgments. (See Attachment #2)

II. Improved Oversight

- Increased oversight of institutions and adopted measures to ensure the accuracy of data and expedite the accreditation review and process. These measures include:
  - Development of rapid-response/fact-finding teams to visit schools with reported problems. These teams respond immediately to serious allegations raised against any school.
  - Required audits of financial statements to ensure the accuracy of reported data.
  - Required workshops for accreditation application and renewal. These workshops are designed to introduce and sensitize applicant schools to the expectations and rigors of the accrediting process.
  - NATTS fought all Temporary Restraining Orders (TROs) sought by institutions appealing Accrediting Commission

decisions in the courts to thus stop access to federal financial aid. This represents a significant shift. Prior to this policy, it was standard operating procedure for NATTS to support a school's TRO in order to help a school raise its standards.

The resistance of TROs has always been the policy of AICS.

-- Engaged in aggressive court cases to defend Accrediting Commission actions to uphold integrity of the standards.

-- Sped up due process while protecting rights of appeal. The process has been reduced from an average of two years to six months.

-- Trained team leaders to ensure that the quality of the process is maintained. Team leaders head up each school visit and are mainly responsible for ensuring that the visit is carried out with sufficient rigor and that a school is adhering to our standards.

-- Investigated high default schools identified by the Department of Education on September 10, 1990. The Department had released a list of the 89 institutions that comprise 50 percent of the student loan dollars in default for private career schools and colleges. Of the 53 schools accredited by AICS and NATTS, 22 have closed. All have been reviewed by the Department of Education; and the AICS and NATTS schools have been reviewed by their respective accrediting agencies. (See Attachment #3)

Increased cooperation of Accrediting Commission with state and federal agencies when problems exist.

State licensing agencies, federal agencies and accrediting commissions are commonly referred to as the "TRIAD." Through increased communication, these three bodies are responsible for the stewardship of the integrity of institutions and federal programs, as well as improved consumer protection. In order to strengthen the role of the TRIAD, NATTS and AICS laid out the following recommendations in our proposal for the reauthorization of the Higher Education Act:

-- Clarify roles and responsibilities of members of the TRIAD.

-- Develop a system of standards by which all members of the TRIAD can be evaluated.

-- Increase communication through the sharing of additional information among all members of the TRIAD and, where appropriate, loan guaranty agencies.

The system in place now combining the regulatory oversight of the Department of Education, state licensing agencies and the accrediting bodies (the TRIAD) must be tightened. NATTS and AICS are committed to fulfilling their obligations to judge the quality of education and remove inferior schools in their sector, and will continue to do so.

III. Improving Consumer Protection

o Accrediting Commissions have tightened accreditation standards to address identified abuses.

The Accrediting Commissions have strengthened guidelines in recent years, addressing critical problem areas of abuses.

Problem:
Use of the payment of commissions to people to recruit students. At one time, institutions were permitted to pay a commissioned sales person to bring students to the door. This is no longer tolerated.

Solution:
NATTS: Institutions may only use salaried employees in their admissions activities and will not pay commissions to recruiters for these enrollments until a student has a realistic assurance of completing the program.

AICS: The Commission narrowly proscribed the recruiting and admissions practices employed by member schools and eliminated the practice of canvassing for admissions. Recruiting and admissions were strictly limited to school employees only and recruiters were prohibited from administering admissions tests.

Problem:
Over-expansion of facilities without appropriate oversight and branch campuses that were inferior in quality. Lack of sufficient oversight in this area allowed some "fly-by-night" schools to operate. Oversight has now been increased substantially.

Solution:
NATTS: The Commission has reaffirmed its standards for branch campuses to ensure that the main school is responsible for the branch; to ensure that a branch is fully reviewed prior to accreditation; and to require

that the branch's program(s) are the same as, or related to, the program(s) offered at the main school. If a branch campus is found in violation of any standard, all branches and the main school suffer the consequences.

AICS: The Commission only permits the processing of one branch application at a time. This usually takes a year. The Commission also requires an evaluation site visit before the branch opens and another visit after it opens.

Problem:
Recruitment of non-high school graduates who were incapable of succeeding in the program in which they were enrolled.

Solution:
The Commission prohibits schools from recruiting prospective students in or near welfare offices, unemployment lines, food stamp centers, and homeless shelters.

AICS and NATTS contracted with the American Council on Education to review and approve independently all tests that could be used by NATTS and AICS schools in determining the capabilities and admission of all non-high school graduates (ability-to-benefit or ATB students). AICS requires that all ATB students be both counseled and tested.

Problem:
Schools served high-risk students and had a track record of high dropout rates and a lack of support services.

Solution:
The NATTS Accrediting Commission requires that any institution serving high-risk students must provide the appropriate support services, such as day care, remediation, and counseling, to increase the probability of student success to the highest degree possible.

(Please refer to Attachment #4 for additional examples of AICS and NATTS Accrediting Commission activities.)

- Over the last three years, we have also supported stricter legislation to ensure quality education, proper oversight by appropriate agencies, and consumer protection.

The associations of AICS and NATTS and their work in legislation have involved support of specific bills having an impact on:

- -- Student tuition refunds -- only the private career school sector of postsecondary education endorsed the legislative initiative to define fair and equitable refunds for students. The specific proposal significantly increases the amount of refund to a student after withdrawal.
- -- Supported independently-developed testing programs for ability-to-benefit (ATB) students.
- -- Supported House and Senate student loan default-reduction legislation.
- -- Supported mandatory postsecondary graduation and placement rate disclosure to empower consumers in making sound choices of postsecondary institutions.
- -- Endorsed legislation that granted authority to the Department of Education to suspend temporarily student aid funds at a school where there have been allegations of fraud and abuse. (See Attachment #5)

o Increased association workshops for institutions to improve administration of federal student aid programs, admissions, retention of students, and placement, and increase competencies of instructors. (See Attachment #6)

o Distributed consumer information to assist students in their career and school search.

In an effort to provide consumers with the information needed to select the right career and school for them, in 1989 NATTS began publishing Getting Skilled, Getting Ahead. More than 200,000 copies have been distributed at no charge through the U.S. Consumer Information Center, making the book its most requested publication ever.

In addition, NATTS distributed copies of the book to all state public assistance agencies to assist caseworkers in their counseling. And copies were sent to the Persian Gulf for distribution to Desert Storm troops.

This valuable guide provides students with a step-by-step process to use in locating and contacting the private career college or school that will provide the training they need; questions students should ask when evaluating the school; information students need to understand the school's requirements; and details on how students can obtain financial aid and the responsibilities involved with a loan. U.S. Senator Paul Simon has called Getting Skilled, Getting Ahead "the best consumer resource guide available."

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(Attachment #7)

IV. Working to Reduce Student Loan Defaults

- Implemented, expanded and refined the nationwide Default Management Initiative, which is underway with both schools and students.

In 1986, three years before the Department of Education announced its Default Reduction Initiative, private career school organizations joined together in support of the Career Training Foundation's (CTF) Default Management Initiative. This was done at a time when evidence was just beginning to demonstrate that defaults in the loan programs were growing. There was confusion about how to support students so they would not go into default. CTF convened the first joint conference of representatives from all participants in the Stafford Loan Program. The question was: How do we make these programs work? The answers included:

-- Developed the Default Management Manual to assist schools in the administration of the financial aid programs and help instill a sense of ownership in students regarding their financial obligations.

-- Conducted Default Management Workshops where more than 5,000 school administrators have learned to reduce loan defaults.

-- Published "I Own My Loan" student guide book, written especially for students, now in its third 100,000-copy printing, stressing the importance of managing a student loan.

-- Developed Default Prevention Video Kits. This includes a guide for school staff and entrance and exit videos for students explaining the importance of repaying the loan and the severe consequences of defaults.

-- Expanded program development to now include economic life skills for student borrowers.

The recommendations contained in the Default Management Initiative became the basis of the House and Senate default reduction legislation and the Department of Education's default reduction regulations. This initiative is one of the reasons private career schools and colleges have consistently lowered their default rate over the last three years.

# # #

We must also recognize that high defaults or low graduation rates do not always mean fraud, waste, and abuse is occurring. Studies show that more often than not it means that the institution is serving a disadvantaged student population.

It must be kept in mind that we will never completely eliminate fraud, waste and abuse because these are elements of the human condition. However, we must constantly strive to eliminate fraud, waste, and abuse. Stewards of federal programs can and must promise to have a system of oversight that continually monitors programs and the participants and when we do find problems, we must move swiftly to resolve them. We must also have the commitment to continually reassess what we are doing to strive for excellence.

Private career schools and colleges play an integral part in preparing our nation's workforce. Their contributions touch our lives in untold ways. Their commitment to continued quality and elimination of abuses remains strong and their actions back this up. The attached material further details steps taken by NATTS and AICS to prevent fraud, waste and abuse.

Attachment #1

433 NATTS- AND AICS-ACCREDITED INSTITUTIONS HAVE CLOSED, VOLUNTARILY WITHDRAWN OR HAVE BEEN REMOVED FROM THE ACCREDITED LIST

	NATTS Accredited Schools	AICS Accredited Schools
No. of accredited schools as of January 1, 1988	1,195	1,036
1988		
Removed from accredited list	14	10
Voluntary withdrawals	8	10
Schools that closed	10	5
	32	25
1989		
Removed from accredited list	22	9
Voluntary withdrawals	21	10
Schools that closed	29	12
	72	31
1990		
Removed from accredited list	10	26
Voluntary withdrawals	24	17
Schools that closed	75	50
	109	93
1991		
*Removed from accredited list	***	***
Voluntary withdrawals	3	0
Schools that closed	27	41
	30	41
TOTAL NO. OF SCHOOLS REMOVED, CLOSED OR WITHDRAWN	243	190

In addition to the above, of the institutions accredited by the National Accrediting Commission of Cosmetology Arts & Sciences since 1988, 107 have been removed from the accredited list, 123 have voluntarily withdrawn from accreditation, and 117 schools have closed.

*Because the accredited institutions cited for removal by the NATTS and AICS Accrediting Commissions have the right to due process and may appeal their removal, no final number is available at this time.

Attachment #2

EXAMPLES OF LEGAL ACTIONS DEFENDING REMOVAL OF ACCREDITATION

The Accrediting Commissions of the Association of Independent Colleges and Schools and the National Association of Trade and Technical Schools have had considerable success in dealing with schools providing poor quality of education, mismanagement, or inadequate financial viability, and those that have engaged in abuse. Prosecution of cases of fraud involving federal student aid programs are the sole purview of the U.S. Department of Education (U.S. Department of Justice) and the states (state attorneys general).

Examples of just a few of the lawsuits defended on behalf of the AICS and NATTS Accrediting Commissions since January 1988 include:

NATIONAL ASSOCIATION OF TRADE AND TECHNICAL SCHOOLS

Accrediting Commission

NATTS has made significant changes in its aggressive legal defense of accreditation actions in recent years, including an increased commitment to oppose temporary restraining orders and preliminary injunctions, as well as a willingness to incur expensive judicial disputes. These cases are fought in the school's jurisdiction, which increases the cost to NATTS.

NATTS no longer agrees to the entry of temporary restraining orders when schools are removed from the accredited list and file suit. Temporary restraining orders allowed federal funding to continue without limitation to the schools during the judicial process. Now, when NATTS removes a school's accreditation, NATTS resists a school's efforts to remain fully eligible for funding while the lawsuit is pending.

1. Careers Unlimited d/b/a Career Opportunities School v. National Association of Trade and Technical Schools. Career Opportunity School (COS) had a main school in Pasadena, California, and a branch in Las Vegas, Nevada, and offered programs in hairstyling and casino dealing. COS filed an application for renewal of accreditation of its main school and for final approval of its branch in 1987. In June 1988, the Commission voted to deny these applications. NATTS's Appeals Panel upheld this decision in August 1988. The basis for the decision were (1) misleading Spanish-language advertising; (2) deficiencies in COS's catalog and enrollment agreement relating to the school's tuition refund policy and the relationship between the main school and branch; (3) failure to supply financial information demonstrating the school's financial soundness and

stability; and (4) failure of the main school to exercise adequate oversight of the branch. An example of the latter problem was the branch's "learning resource center"--an empty room with unfilled bookshelves.

On August 24, 1988, COS filed suit against NATTS, the Accrediting Commission and the Appeals Panel in state court in Nevada. We had the case transferred to the federal district court in Las Vegas. Finding that substantial evidence supported the Commission's decision and that schools and the public would be harmed by continuing the school's accreditation, the district court denied COS's motion for a temporary restraining order and its motion for a preliminary injunction requiring the restoration of the school's accreditation while the case proceeded. Thereafter, we filed a motion to dismiss COS's lawsuit. Rather than respond to this motion, COS withdrew the lawsuit.

2. Delaware Valley School of Trades, Inc. v. National Association of Trade and Technical Schools. The Accrediting Commission voted to deny renewal of accreditation to the Delaware Valley School of Trades (DVST) in January 1989. The Appeals Panel upheld this decision in March 1989. The bases of the decision were (1) DVST's failure to demonstrate a sound financial structure; (2) the school's failure fully to make refund payments to students in accordance with accrediting standards; and (3) untimely refund payments to students. In April 1989, DVST filed in bankruptcy and moved for an injunction in bankruptcy court in Philadelphia, Pennsylvania to require the restoration of its accreditation. We obtained a postponement of the preliminary injunction hearing and prepared to vigorously defend against DVST's motion for preliminary injunction. Shortly before the hearing, DVST elected to drop the motion and dismiss its lawsuit. Thus, the decision to deny renewal of accreditation was left standing.

3. Bailie Communications, Ltd. v. National Association of Trade and Technical Schools. In April 1989, the Commission denied renewal of accreditation to the Bailie chain of broadcasting schools in the Western United States. The Appeals Panel upheld the Commission's decision in July 1989. The basis of the decision was Bailie's failure to demonstrate financial stability and soundness as indicated by weakness in its financial statements and a failure to pay fees and dues to NATTS.

In August 1989, Bailie filed suit against NATTS and sought an injunction requiring the restoration of its accreditation in federal district court in Seattle, Washington. The court did initially issue an order which temporarily restored Bailie's accreditation pending another Appeals Panel hearing because the court found (mistakenly, we believe) that the first Appeals Panel hearing had been procedurally flawed. After the issuance of this order, another Appeals Panel hearing was convened within two weeks of the court's decision. The Appeals Panel again upheld the

Commission. Bailie then filed a motion to set aside this decision, but the court denied Bailie's motion. Thus, the Commission's decision was left standing.

We then filed a motion for summary judgment which would have resolved the case completely in NATTS's favor. Before the court could reach a decision on our motion, Bailie filed in bankruptcy. Bailie sought unsuccessfully to argue that the automatic stay provision of the bankruptcy laws precluded NATTS from withdrawing Bailie's accreditation. Bailie failed to pursue the bankruptcy proceeding and never answered NATTS's motion for summary judgment. Eventually, the bankruptcy proceeding was terminated, and in October 1990, the case finally came to an end when the district court granted summary judgment in NATTS's favor.

4. Layne Educational Services, Inc. d/b/a Cleveland Institute of Technology v. National Association of Trade and Technical Schools. In June 1989, the Commission voted to deny final approval to the branch of the Cleveland Institute of Technology (CIT) in Toledo, Ohio. In August 1989, the Appeals Panel reviewed the Commission's decision and disagreed with two of the eight grounds for the decision. On that basis, the Appeals Panel remanded the matter to the Commission.

In October 1989, the Commission reconsidered its earlier decision in light of the Appeals Panel's review and decided again not to grant final approval to the branch based upon the six grounds that the Appeals Panel had upheld. These were: (1) poor rates of completion of students in the school's programs in Building Services Management (36.5%) and Word Processing (27.6%) (the school sought to "explain" this deficiency by noting that the male BSM students had been harassing the female word processing students and by terminating the BSM program); (2) poor placement in the Building Services Management program (45.6%); (3) inadequate instructional equipment (students were being "taught" how to screw in light bulbs and plug in air conditioners); (4) poor student attendance; (5) the school's failure to abide by its own attendance policy; and (6) misleading advertising ("Jobs! Jobs! Jobs!").

CIT filed suit against NATTS in October 1989 in federal district court in Toledo, Ohio. As usual, the school sought a temporary restraining order and preliminary injunction requiring the restoration of its accreditation. The court denied both motions. The school then elected to voluntarily dismiss its suit.

5. Simdex Company, Inc. d/b/a Simdex Technical Institute v. National Association of Trade and Technical Schools. In November 1989, the Executive Committee of the Accrediting Commission was made aware of a scheme by which Simdex Technical Institute had sold access to federal financial aid to an Indochinese immigrant group by falsely claiming that a facility operated by this group

was a separate classroom of Simdex. The scheme had been called to NATTS's attention by Senator Lloyd Bentsen's office. The Executive Committee issued an order to show cause why the school's accreditation should not be revoked in December 1989. After reviewing the school's response, the Commission voted to revoke the school's accreditation in February 1990. The Appeals Panel upheld the Commission's decision in April 1990.

In May 1990, Simdex filed suit in state court in Texas. Before Simdex's request for preliminary injunctive relief could be heard, however, Simdex voluntarily dismissed the suit and filed in bankruptcy. In the bankruptcy court, Simdex sought preliminary injunctive relief requiring the restoration of its accreditation. In July 1990, the bankruptcy court denied Simdex's request. We then filed a motion for summary judgment to resolve the case completely in NATTS's favor. Simdex did not respond to this motion, and instead withdrew its lawsuit.

6. COPES, Inc. d/b/a Golden State School of Oxnard, California v. National Association of Trade and Technical Schools. This is our most recent case. In this case, the Commission began a complete review of the school after a change of ownership. In October 1990, the Commission voted to deny the school renewal of its accreditation. The Appeals Panel upheld this decision in January 1991. The bases for the decision were (1) severe financial weakness; (2) failure to pay timely refunds to students (over $170,000 remained unpaid at the time of the Appeals Panel hearing); (3) a defective enrollment agreement; (4) failure to demonstrate that the school's refund policy was in compliance with accrediting standards; and (5) failure to pay accrediting fees.

Golden State filed suit in federal district court in Los Angeles, California in late January of this year. The school sought a temporary restraining order and preliminary injunction requiring the restoration of its accreditation, and also asserted claims for over $500,000 in damages. The court denied the motion for temporary restraining order on February 4, 1991. On February 18, 1991, the court denied Golden State's motion for preliminary injunction. In so doing, the court stated that Golden State's claims were totally without merit and suggested that they might be susceptible to a motion for summary judgment. We informed the Judge that we would file a motion for summary judgment, and in fact, did so. The school agreed to drop its lawsuit.

Bankruptcy is the only area where we have encountered difficulty in defending the decisions of the Accrediting Commission. In January 1989, a bankruptcy court in Fresno, California entered a preliminary injunction against NATTS which required the restoration of the accreditation of the Golden State School in San Bernardino and Fresno, California. The bankruptcy court's decision was principally based upon its view that the executory contract provisions of the bankruptcy laws precluded the withdrawal of accreditation where a school had filed in bankruptcy prior to the Commission's decision. We appealed this decision to the federal district court in Fresno, California. Unfortunately, the district court agreed with the bankruptcy court. As a result, we have now appealed the decision to the Ninth Circuit Court of Appeals, and we are awaiting a decision. The Fresno precedent obliged the Commission to rescind an accreditation decision involving the National School of Health Technology in Philadelphia, Pennsylvania in August 1989.

The impediment that the bankruptcy laws pose was partially resolved by an amendment to the bankruptcy code passed in the closing days of the last Congress. That amendment clearly forecloses the use of one potentially troublesome provision of the bankruptcy laws--the automatic stay. However, the amendment did not explicitly address the executory contract provision at issue in the Fresno case.

ASSOCIATION OF INDEPENDENT COLLEGES AND SCHOOLS

Accrediting Commission

1. North Jersey Secretarial School, Inc. v. Association of Independent Colleges and Schools, Inc., Victor K. Biebighauser and Edward P. Mattar, U.S. District Court, District of New Jersey, Civil Action No. 83-4242-L. This action was filed in the U.S. District Court in Newark, New Jersey in November, 1983, seeking an injunction for renewal of the accreditation of the First School of Secretarial and Paralegal Studies, located in Passaic Park, New Jersey, and declaratory judgment that AICS has violated regulations of the Department of Education, and for damages under antitrust and common law tort claims, charging the defendants with entering into a conspiracy with certain other organizations and individuals to enable a competing school chain to compete unfairly with the plaintiff institution and to monopolize the business school field in New Jersey. Under the antitrust courts, plaintiff demanded compensatory and punitive damages and costs. No specific amount of damages was stated in the complaint.

Upon motion of defendants on October 3, 1984, the parts of the complaint dealing with the failure of AICS to grant accreditation to First School were stricken as moot and the allegations that AICS fails to meet Department of Education requirements for nationally recognized accrediting agencies were dismissed for lack of subject matter jurisdiction. The court granted the plaintiff leave to file an amended complaint on the remaining counts. The plaintiff filed an amended complaint in October, 1985 seeking damages on the antitrust and common law tort claims and the District Court dismissed with prejudice the amended complaint. Appellant appealed to the United States Court of Appeals for the

Third Circuit the dismissal with prejudice of its amended complaint by the trial court as a sanction for appellant's discovery abuses.

The Court of Appeals entered judgment on October 12, 1989, affirming the lower court's decision in favor of the association on October 12, 1989.

2. North County College v. Association of Independent Colleges and Schools, William Bennett, Secretary, United States Department of Education, USDOE, California Department of Education, (CAL DOE), William K. Noble, Acting Director, CAL DOE and James M. Phillips, Executive Director, AICS. This was an action filed in December, 1987 in a Chapter 11 reorganization proceeding in the U.S. Bankruptcy Court for the Southern District of California in San Diego in which the bankrupt debtor, North County College, which had been denied reinstatement of accreditation following a change of ownership, sought (a) injunctive relief to restore the accreditation and (b) damages for violating the automatic stay in the Bankruptcy Code when AICS affirmed the denial in an appeal hearing in April, 1987 shortly after the Chapter 11 petition had been filed by the school. Claimed in the complaint were compensatory damages in the sum of $1,500,000 and punitive damages in the sum of $2,000,000. The central issue in the case was whether "accreditation" is property of the bankrupt debtor's estate which was affected by AICS' April, 1987 denial of the appeal.

On cross motions for summary judgment, the court, by order dated June 24, 1988, vacated the AICS April, 1987 affirmance of the denial as a violation of the automatic stay and ordered AICS to evaluate the school for consideration of a new grant of accreditation at the August, 1988 meeting of the Accrediting Commission. A site visit was conducted and the school was scheduled for a special appearance at that meeting of the Commission.

The issue of whether accreditation is property of a bankrupt debtor's estate and whether the automatic stay in the bankruptcy law applies to education accreditation was a novel question in the Ninth Circuit.

AICS and the Trustee of North County College entered into an Agreement and Mutual Release on June 14, 1989, in which the Trustee agreed to dismissal with prejudice of the action against AICS. The Agreement and Mutual Release did not require AICS to admit liability or to pay any damages.

3. Long Beach College of Business, Inc. v. Association of Independent Colleges and Schools, Accrediting Commission, William Bennett, Secretary of Education, Donald Waldbauer and Shirley Lowery. U.S. District Court for the Central District of

California, Civil Action No. 88 00042 CBM (GHKx). Action by Long Beach College of Business, Long Beach, California, for declaratory and injunctive relief to restore accreditation withdrawn by AICS and eligibility for federal student financial assistance programs and for damages from AICS for breach of fiduciary duty, interference with advantageous business relationships and prospective business advantages, and breach of implied covenant of good faith and fair dealing. No specific amount of damages was stated in complaint.

AICS, the Accrediting Commission and the individual defendants Waldbauer and Lowery, AICS Commissioners, filed an answer denying any liability. Granting the school's motion for a preliminary injunction, the court, on February 12, 1988, found that there was a procedural error in the AICS appeal proceeding, that the school had demonstrated likelihood of success on the merits, and ordered AICS and the U.S. Department of Education to reinstate accreditation and eligibility for federal student financial assistance programs, and further ordered the Accrediting Commission to hold a further hearing on the school's application for a new grant of accreditation at its April, 1988 meeting. By a consent order entered on April 1, 1988, the hearing was postponed to the August meeting of the Commission.

4. Robert Fiance Business Institute, Inc. v. Association of Independent Colleges and Schools, Civil Action 88.0942 U.S. District Court, Eastern District of New York. This was an action filed by Robert Fiance Business Institute, Inc., owner of American Hi-Tech Business School, an AICS accredited institution, against AICS in the Supreme Court of Kings County, New York and removed by AICS to the U.S. District Court for the Eastern District of New York in Brooklyn. The suit sought declaratory and injunctive relief to obtain a new six-year grant of accreditation, for a declaratory judgment that AICS no longer qualifies for recognition by the Secretary of Education, and for damages, compensatory and punitive, in the sum of $5,000,000 on each of four counts for wrongful denial of a new full grant of accreditation, denial of due process, breach of fiduciary duty, and breach of implied covenant of good faith and fair dealing.

Since the Accrediting Commission, at its April, 1988 meeting, has issued a new three-year grant of accreditation to the institution, the plaintiff was not able to show any damages resulting from the Commission's previous actions.

5. Denise McIntyre, et al. v. Acadiana Technical College, Inc., Phillip J. Vinciguerra, Daniel H. Guillot, and Thomas Vinciguerra, Association of Independent Colleges and Schools, Civil Action 87-4214C, Fifteenth District Court, Lafayette Parish, State of Louisiana. This is an action for damages by a group of students and former students at Acadiana Technical College, Lafayette, Louisiana, for fraudulent misrepresentation of a court reporting

program in which the students were enrolled and for violation of the Louisiana Consumer Protection Law governing unfair and deceptive trade practices. AICS was added as a defendant in July, 1988. The amount of damages claimed are $825,000 plus refund of all tuition, costs of equipment, textbooks, and other fees incurred by the plaintiffs in enrolling and participating in the school's court reporting program, together with attorneys' fees and costs.

The claims against AICS are based on breach of contract, tort or negligence and joint venture, agency or partnership theories.

Co-defendant Acadiana Technical College filed under Chapter 11 of the United States Bankruptcy Code and is not an active participant in the settlement discussions or litigation at this time. In another proceeding with Acadiana, the Accrediting Commission suspended the institution's accreditation. An appeal to the Review Board was temporarily enjoined in July 1990 on the grounds that the suspension action taken by the Commission violated the automatic stay provision of the U.S. Bankruptcy Code since Acadiana was in Chapter 11 status.

Subsequent to the court action, Congress passed legislation which specifically exempted actions by accrediting agencies from the automatic stay provisions. The Commission then proceeded to schedule the Review Board hearing. Acadiana unsuccessfully sought another TRO on the grounds that the new statute could not be applied retroactively. In April 1991, Acadiana filed for Chapter 7 dissolution.

6. Deborah Zizzo v. Watterson College, CareerCom, Association of Independent Colleges and Schools, Marty Ramseck, Dave Perris and Does 1-50, Superior Court of the State of California, County of San Diego, Case No. N45469.

This case was filed on October 29, 1989 by Ms. Zizzo, a former paralegal student at Watterson College, a school accredited by AICS. Plaintiff seeks damages against AICS under negligence and negligent misrepresentation theories. She claims she was wrongfully dismissed from the school's paralegal program because she had been critical of its quality.

At this time, the owners of the school are attempting to settle with Ms. Zizzo. No trial date has been set, and discovery is underway. The plaintiffs have been fined for failing to respond to interrogatories in October 1990.

7. Bridges, et al. v. Jefferson Business College, et al., United States District Court for the Western District of Tennessee, C.A. No. 89-3054-4B.

AICS is a defendant in a class action lawsuit filed by former students of an AICS-accredited school in Memphis, Tennessee. The first cause of action against AICS is for alleged violation of the Tennessee Consumer Protection Act. Specifically, plaintiffs allege that AICS' accreditation of Jefferson Business College was "materially misleading and fraudulent." The second cause of action alleges that AICS breached a contract with the defendant school, and that plaintiffs were third-party beneficiaries of that contract. Specifically, plaintiffs allege that in accrediting Jefferson, AICS knew the students would rely on AICS to "ensure the academic standards of Jefferson."

A motion to dismiss both counts against AICS was filed on March 29, 1990, and it is still pending.

Attachment #3

U.S. DEPARTMENT OF EDUCATION'S LIST OF 89 SCHOOLS WITH HIGH DEFAULT RATES AND HIGH DOLLARS IN DEFAULT

On September 10, 1990, the U. S. Department of Education released the list of the 89 institutions that made up 50 percent of the student loans in default for our sector and 25 percent of the total loans in default.

NATTS

Twenty-nine of the 89 private, postsecondary career schools and colleges listed by the U. S. Department of Education as having high default rates and a high volume of loans in default are accredited by the Accrediting Commission of the National Association of Trade and Technical Schools.

Of these 29 schools:

- All have been visited by a NATTS accrediting team.
- Sixteen of the schools are inner-city schools attended by low-income and minority students. All available research shows that students who are minority, low-income, single heads of households or independent of parental income have a higher tendency to default on their student loans than other students.
- Thirteen are still accredited. Of the thirteen, one is short-term accredited for a period of two years (accreditation is awarded normally for five years).
- Eight have been removed from the accredited list by the Accrediting Commission. Causes for removal (that are not necessarily attributable or limited to these schools) include:
  - financial instability or bankruptcy
  - educational outcomes (poor placement, low graduation and retention rates, etc.)
  - lack of continued compliance with the Standards of Accreditation

  - * staff stability, lack of equipment and/or inadequate facilities

- o Two are under review by the Accrediting Commission;
- o Two are under quarterly monitoring by the Accrediting Commission for areas such as financial concerns, placement and/or retention rates, etc.;
- o One has been removed by the Accrediting Commission and ordered by a court to have its accreditation reinstated; and,
- o Three are closing and in the process of a "teachout."

AICS

Twenty-four of the 89 schools listed as having high default rates and a high volume of loans in default were accredited by the Accrediting Commission of the Association of Independent Colleges and Schools (two of the schools listed as AICS-accredited were not).

Of these 24 schools:

- o Thirteen were closed several months or years before the list was issued;
- o Eleven are still accredited;
- o All currently operating have been visited by an AICS Accreditation Commission team.
- o Four of the eleven are under financial review by the Accrediting Commission (one is in Chapter 11 bankruptcy); and
- o Eight of the 24 had default rates of less than 35 percent and two of those eight also have closed. The other six of these eight are still accredited, which means that more than half of the schools on the list still accredited have default rates of less than 35 percent. All but one has a default rate of less than 30 percent.

Attachment #4

HISTORICAL OVERVIEW

Listed below are several of the initiatives NATTS and AICS have undertaken over the past several years.

NATTS Accreditation

While the Accrediting Commission of the National Association of Trade and Technical Schools recognizes that accreditation is a prerequisite for eligibility for federal student financial aid, its role is not to oversee or administer federal financial aid.

For years, federal and state governments and society at large have looked to accreditation to determine if a school meets certain educational measures and sound school practices. The Accrediting Commission's exclusive concerns are educational excellence and institutional integrity. Those concerns have caused accrediting bodies to monitor and act on those schools that fail to comply with their accrediting standards.

Student Complaints: The Commission requires each school to publish in the student catalog and/or handbook the procedures to be followed in lodging a complaint concerning the institution.

Admissions Procedure: Students who have not visited the school facility prior to enrollment will have the opportunity to withdraw without penalty within three days following either attendance at a regularly scheduled orientation or following a tour of the facilities and inspection of equipment.

School Visits: The Commission has significantly increased the number of on-site visits to member institutions. In addition to the regularly scheduled five-year review visits, schools are now routinely visited on a Change of Ownership or the addition of a degree program. Visits are also scheduled when programs are added that are not within the original mission of the school. Annual Report verification visits are made to a statistically significant, randomly selected number of schools following receipt of the Annual Reports.

Codes of Conduct: The Commission drafted and adopted a series of Codes of Conduct for the members of the Commission, team members and members of Appeals Panels as well as staff. The codes reflect the Commission's determination to hold all persons involved in the evaluation process accountable for the integrity of the process.

Bankruptcy: The Commission issues a Show Cause Order to schools that file bankruptcy, requiring a detailed explanation of the institution's plan to alleviate their financial problems. During the term of the Show Cause the school is prohibited from any changes in its status, e.g. programs, ownership, location.

Recruiting Practices: Schools may only use employees in the recruitment activities with commissions for all enrollments predicated on the successful completion of, at a minimum, thirty days of training. The Commission prohibits schools from recruiting prospective students in or near welfare offices, unemployment lines, food stamp centers, and homeless shelters.

Dual Accreditation: The Commission adopted policy developed by the Council on Postsecondary Accreditation (COPA) which requires full disclosure by an institution concerning its past, present and future relationship with any other accrediting commission.

Branches: The Commission has reaffirmed its standards for branch campuses that ensure the main school's responsibility for the branch; ensure that a branch is fully reviewed prior to accreditation; and require that the branch's programs are the same as or related to the program(s) offered at the parent school and has the same name as the main school.

Instructor Qualifications: All instructors must have at a minimum two years of practical work experience or equivalent training in the field being taught and those who are responsible for General Education courses in degree programs, a baccalaureate degree.

Refunds: The Commission requires that schools will refund tuition for the program up to the 75 percent level of the program or course of study.

The Commission has also adopted these procedures designed to expedite the accreditation process and review.

Rapid Response Teams: A pool of qualified individuals is available on an ongoing basis to quickly review schools after the Commission is made aware of potential violations of accrediting standards. This method will enable the Commission to determine the level of potential problems as they develop.

Reporting: Audited or reviewed financial statements are now required. Those reports are required as part of the school's Annual Report and will give the Commission a better idea that a school may be developing a problem(s) which could affect students.

Workshops: Schools that apply for accreditation and seek to renew their accreditation are now required to attend workshops prior to application submission. These workshops are designed to improve the schools' understanding of the accreditation process and its procedural requirements and may lessen delays in the accrediting process. The workshops have also screened out schools that are not serious about applying for accreditation; in 1989, for example, 193 potential applicant schools attended accreditation workshops but only 70 actually applied for accreditation.

Appeals Panel: The Appeals Panel's scope of review of Commission decisions has been focused on the original record before the Commission, and whether the Commission's action was appropriate based on that evidence.

AICS Accreditation

Since 1988, the AICS Accrediting Commission has instituted a number of criteria and policy changes.

Clock to Credit Hour Conversion: The Commission clarified the conversion from clock to credit hours to all member schools and cautioned schools on over-awarding.

Title IV Higher Education Act Programs: A lengthy (13 page) update and analysis (including Q & A) on ability-to-benefit, remedial programs, and English as a second language (ESL) provisions in the Title IV programs was provided to all schools. The Commission also adopted specific guidelines controlling the offering of ESL programs and explained to member schools the federal regulations regarding these types of programs.

Financial Reviews: All AICS institutions under financial review by the Commission are required to seek prior approval before initiating any non-main campus activity.

Recruiting and Admissions: The Commission narrowly proscribed the recruiting and admissions practices employed by member schools and eliminated the practice of canvassing for admissions. Recruiting and admissions were strictly limited to school employees only and recruiters were prohibited from administering admissions tests.

Fast Assessment and Compliance Teams (FACT): These FACT Teams are authorized by the Commission to investigate and report on alleged improper business and educational practices by or at member institutions.

Dual Accreditation: The Commission adopted policy developed by the Council on Postsecondary Accreditation (COPA) which requires full disclosure by an institution concerning its past, present and future relationship with any other accrediting commission.

Educational Services: The Commission established policy regarding third-party contracting for educational services with non-accredited entities.

Satisfactory Academic Progress: AICS member schools are required to apply standards of satisfactory progress to all students, not just to ability-to-benefit students.

New Applicants Visit: All schools applying for AICS accreditation must first undergo a resource (readiness) visit before they proceed with the self-study review.

Required Degree: The Commission requires that instructors teaching computer subjects related to business administration and secretarial science must possess a baccalaureate degree.

Institutional Effectiveness: The Commission adopted criteria by which institutions must demonstrate institutional effectiveness, including retention, placement, and employer satisfaction.

Teach-Out Plans: The Commission requires all instructions on academic or financial show cause to submit a formal teach-out plan. The Commission also stipulates that teach-out plans, retention improvement directives or placement improvement directives may be requested from those schools on financial review.

Accounting Information: The Commission requires schools to submit all financial information based on the accrual method of accounting.

Education Component: Schools must include a general educational component for at least three years in an associate degree program before they can be considered for junior college accreditation.

Appeals Process: After a revision in the appeals procedures, the Commission provided that all negative actions, as defined by the Council on Postsecondary Accreditation, could be appealed to an outside body composed of former commissioners. The policy on confidentiality was also broadened to permit disclosure of accrediting actions to interested parties.

Strengthened Curriculums: The Commission requires all institutions to strengthen curriculums requiring state certification for graduates to be licensed to practice.

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Accreditation Workshops: The Commission mandated that all schools seeking initial accreditation or renewing existing accreditation must attend an accreditation workshop.

High Default Schools: The Commission directed interim reviews of all high default (over 35 percent) schools.

Attachment #5

LEGISLATION SUPPORTED BY NATTS & AICS

Public Law 101-166, FY 1990 Labor, Health and Human Services, and Education Appropriations Act.

NATTS and AICS strongly supported several provisions of this legislation, and assisted in drafting one provision:

- Student Refunds. Each institution participating in the GSL programs with a cohort default rate exceeding 30 percent must implement a pro rata refund policy for all Title IV aid recipients. The policy must provide for at least as great a refund as would the policy defined in the Secretary's Default Reduction Initiative.

Public Law 101-239, The Omnibus Budget Reconciliation Act of 1989.

NATTS and AICS assisted legislators in drafting several provisions for this Act, including:

- Loss of Accreditation. An institution cannot be certified or recertified as an eligible institution if that institution has had its accreditation withdrawn, revoked, or otherwise terminated in the preceding 24 months or if it withdrew from its accreditation under a show cause or suspension order during the preceding 24 months unless (a) the institution's accreditation has been restored by the same accrediting agency; or, (b) the institution has demonstrated to the Secretary of Education its academic integrity in accordance with Section 1201 (a) (5) (A) or (B) of the Act.

Institutions with dual accreditation that have either had their accreditation withdrawn, revoked, or otherwise terminated or that withdraw from either accreditation under show cause or suspension order during the preceding 24 months would not be eligible for continued Title IV participation unless conditions (a) or (b) as listed above are met.

- GED Program Required for ATB Students. For schools to remain eligible to participate in any Title IV programs, other than the SSIG and Byrd Scholarship Programs, a school that admits ability-to-benefit (ATB) students must make available to these students a program that is proven successful in assisting them in obtaining a certificate of high school equivalency. Schools are not required to provide in-house GED programs but must ensure that such a program is available to students.

- Default Reduction Program and Loan Rehabilitation. This provision allows for a six month default amnesty program for defaulted GSL borrowers. A defaulter who otherwise qualifies will be eligible to participate further in Title IV programs if he or she repays in full all the outstanding principal and interest on the defaulted loan(s) during this period. A defaulter who otherwise qualifies may also regain eligibility for participation in Title IV programs by making 12 consecutive monthly payments of a defaulted GSL and if their loan is then sold to an eligible lender.

- 30-Day Check Hold. An institution may not deliver the first installment of an SLS loan to a borrower who has not successfully completed 30 days after the first day of the program of study in the first year of the program of undergraduate education in which the student is enrolled.

NATTS also supported five additional proposals in this legislation:

o No SLS loans to undergraduates enrolled at an institution with a default rate of 30 percent or higher;

o No student may borrow more than $4,000 under the SLS program in any academic year or any period of nine consecutive months, whichever is longer;

o The proceeds of a Stafford or SLS loan must be disbursed in two or more installments regardless of the loan amount or the length of enrollment period for which the loan is made;

o Second or subsequent loan disbursements must be applied to reduce the student's loan balance after a lender or escrow agent is notified by a student or a school that a student has ceased enrollment; and

o Professional judgment may be used by aid administrators in determining aid awards only on a case-by-case basis, and similar cases may not be treated on other than a case-by-case basis.

Postsecondary Disclosure Act of 1990 (H.R. 4629)

NATTS helped to draft this legislation, which was introduced by Representative Chris Perkins (D-KY). The bill would extend the U.S. Department of Education's requirements for the disclosure of completion rates set by the Secretary's Default Reduction Initiative to include all degree-granting higher education programs, not merely those programs which prepare students for vocational, trade, or career fields.

The bill would guarantee that students seeking postsecondary education would have the opportunity to know the completion rates of the program in which they wish to enroll. The legislation would also further protect students from schools that misrepresent their supposed graduation rates.

The Postsecondary Education Disclosure Act of 1990 was incorporated into The Student Right-To-Know Act (H.R. 1454), which was unanimously passed by the House in June. The bill requires the Secretary of Education to develop definitions and methodologies for measuring graduation rates broken down by program or field of study and by individual school or academic division. It also requires the Secretary to determine the best way to calculate employment rates of recent trade and technical school graduates in their field of expertise. The Secretary would be required to submit those findings to the Congress by October 1, 1991.

"This legislation will safeguard students who can be vulnerable consumers and unprotected citizens on traditional college campuses," said NATTS President Stephen Blair in support of the bill. "Disclosure of graduation rates across the spectrum of postsecondary institutions would enable students to determine whether their prospects of completing a given program are favorable. The legislation would provide students with valuable consumer data and help to ensure productive use of federal student aid dollars." The bill was signed into law in Fall, 1990.

Student Loan Abuse Prevention (SLAP) Act.

NATTS supported this legislation designed to halt abuses in the federal student loan program, sponsored by Rep. Lawrence Smith (D-FL) last May. In a news conference to announce the legislation, NATTS President Stephen Blair said, "A few bad apples in the private career college and school sector hurt the efforts of the majority. NATTS fully supports the Department of Education in closing the doors of schools involved in fraudulent activity."

This legislation was incorporated into the Student Loan Reconciliation Amendments of 1989 in P.L. 101-239 and became effective September 21, 1990. Under this new regulation, the Secretary of Education is authorized to use emergency action to prevent misuse of funds by suspending federal student aid funds from a school if there is reliable information that the school is violating the law. On October 4, 1990, Secretary Lauro Cavazos suspended federal aid funds to 14 schools under this regulation. The schools will have an opportunity to show cause why the sanction should be lifted.

Default Reduction

NATTS supported the Department of Education's Default Reduction Initiative proposed in June, 1989. Under the initiative, regulations called for institutions with default rates between 40 and 60 percent to reduce their default rates by 5 percent each year for five years; institutions with rates over 30 percent to implement prorated refund policies; and institutions with rates above 20 percent to develop default management plans.

"These regulations are tough and will have an adverse effect upon a number of schools," said NATTS President Stephen Blair. "However, we are confident that these regulations will help to substantially reduce the defaults that are caused by the weaknesses in the current program."

The ED regulations also require that all institutions which offer vocational education programs list completion rates, placement rates, and state licensing requirements to all students. This requirement was not made of baccalaureate programs. "Parents who enroll their children in traditional four-year degree programs should have access to the same performance results expected of programs of less than four years. These degree programs should have the same consumer disclosure rules as private career colleges and schools," said Blair.

QUALITY INITIATIVES

Association of Independent Colleges and Schools
in the forefront of the quality movement in
ucation. In the spring of 1988, the AICS
ned a Quality Symposium, the first of its kind in
ucation. That symposium was followed by the 1989
uality Assurance for Private Career Schools, an
ing industrial quality assurance to the operation
ostsecondary institutions. This book was
12 quality assurance workshops held in various
hout the country.

ICS Accrediting Commission has been in the
measurement of educational outcomes and their
overall institutional effectiveness. While other
econdary education debated the issue, AICS
creditation criteria, effective in 1990, requiring
be able to demonstrate satisfactory student
acement rates, skills and knowledge gained as a
struction at the institution, and satisfaction by
aduates with the education received.

piece of the quality initiative has been the
lf-paced, campus-based faculty development package
institutions. This package has been an attempt to
the classroom level. It is delivered to
er individually or through group in-service
s complemented by a series of workshops in various
the country. The package has been met with
sm, and, like all of the quality initiatives, will
refined as AICS meets the challenges of the '90s.

Attachment #7

CONSUMER INFORMATION

In 1989, NATTS published Getting Skilled, Getting Ahead, a student's guide to selecting a career and the right private career school. Since then, the book has been a phenomenal success.

In an easy-to-read format, Getting Skilled, Getting Ahead provides prospective students with information on the careers in demand, and helps them determine what career is right for them. The book also includes a step-by-step process students can use in locating and contacting the private career school that will provide the technical education they need; questions students should ask when evaluating any postsecondary institution; information students need to understand institutional requirements; and how students can obtain financial aid and the responsibilities involved with a loan.

U.S. Senator Paul Simon has called Getting Skilled, Getting Ahead "the best consumer resource guide available." Last year, the Department of Education obviously agreed with Senator Simon; instead of introducing its own consumer information book, the Department publicly endorsed Getting Skilled, Getting Ahead and made the publication available, free of charge, through the U.S. Consumer Information Center. As of October 1990, more than 200,000 copies of Getting Skilled, Getting Ahead have been distributed by the Consumer Information Center, making the book its most requested publication ever.

Mr. **Andrews**. Thank you very much, Mr. Blair. And I thank the other members of the panel for their very informative and stimulating testimony. I will now go to Mr. Gunderson.

Mr. **Gunderson**. Thank you, Mr. Chairman. And thank all of you for your patience and for your testimony.

I guess, Mr. Resso, your statement jumps out. What do you suggest we do? I mean, you're well aware of the reports that are coming out, the Nunn report yesterday, the amount of money we spend on the default programs, all of the discussions on the integrity and credibility of loan programs.

And as best as I can detect from your statement, you're suggesting that, if anything, we've done too much. Is that correct?

Mr. **Resso**. No. First of all, I haven't had the privilege to see the Nunn report, let alone read it. However, I think the accrediting bodies should—their function and purpose should be for a quality education and the Federal Government should be looking into the Title IV programs.

Mr. **Gunderson**. But isn't that what we're doing?

Mr. **Resso**. And there should not be an overlap.

Mr. **Gunderson**. Isn't that what we are doing, looking at the Title IV programs?

Mr. **Resso**. Yes. But also, you're looking at the default rate, which will put a lot of schools out of business. And there's a lot of good schools that need to stay in business. And if they go out of business, I'm sure they won't reopen.

And I don't think the default rate is the criteria to put these schools out of business because I have several schools, eight to be exact, and I know with our inner school we have the same curriculum, we have the same educational director, but our default rate is a little bit higher than our suburban school.

Mr. **Gunderson**. Can you give me your default rates?

Mr. **Resso**. Pardon?

Mr. **Gunderson**. Can you give me your default rates?

Mr. **Resso**. In our inner city, it's about 33 percent; in our suburban school is 5 to 9 percent. So it is a difference with the social economic backgrounds.

Mr. **Gunderson**. I don't disagree with that, and I'd be the first to tell you that the quickest solution to the default rate is to declare high risk students ineligible. I mean, no question about that.

That doesn't mean we don't have a problem. We simply can not take a reauthorization bill to the floor that doesn't do something in addition to what's already been done to deal with the issue of defaults because if we don't do it intelligently, and I'll be blunt with you, our colleagues in the House floor will do it emotionally.

And we need more specifics as to what exactly we can do intelligently to solve the problem that doesn't destroy the ability to serve the high risk student. I agree with you. But we need that help from you.

Mr. **Resso**. I think you have to, first of all, before you come out with making a blanket of 35 percent default rate, I think you have to come out with the mitigating circumstances. What is that going to be? Because, you know, some of the schools are going to have difficulty.

Mr. Gunderson. Put yourself in our problem. The cost of tuition and higher education across the board continues to go up above and beyond the rate of inflation. The cost of the Federal Government programs in Title IV has, I believe, more than doubled during the last 10 years. And, yet, we hear people come before this committee telling us that we are inadequately serving the constituency out there, with some merit.

Now, we've got to make some tough policy decisions there as to who are we going to serve and how. I mean, other than health care, higher education is the only area where the government is expected to be the third party payee, but it has absolutely no ability to control the cost of the program. And you're suggesting we ought to have no ability to control who has access to that program. In 1991, we don't have that luxury.

Mr. Resso. I realize we must have control. I could probably provide you with a written statement, and I could certainly submit it to the committee.

Mr. Gunderson. Would you support Mr. Petri's proposal of income based repayments? Is that your idea of a solution?

Mr. Resso. No, that's not my idea of a solution. No.

Mr. Gunderson. Who do you see as the problem? Is the problem the student who drops out shortly after they've received the loan, or is the problem the student who is unable to pay back after they've received a degree?

Mr. Resso. I think it's not the school problem. If they're doing a thorough job with a good curriculum, their placement rate is extremely high, I believe sometimes it's the lender or the servicers not dunning these people for repayment. The school is doing so many things to try to keep reminding these students to pay back, if they do have a student loan, to pay it back.

Mr. Gunderson. So you believe the school has no responsibility at all?

Mr. Resso. No. I think we've proven that through our national association that we certainly have financial aid workshops, we've had loan counsel task force. We got together with a default management plan that we submitted, and I'll be very happy to share it with you. We're doing all we can, possibly.

Yes, the school should never let up. No, the school shouldn't go scot free. The school should still try to work extremely hard in not only educating the students and getting them placed and becoming taxpayers, but also do all they can for these students to pay back if they owe money.

Mr. Gunderson. Let me go on to some of the others here. I happen to agree with you, Mr. Blair, that probably one of the biggest problems with the administration proposal is the ineligibility for short-term courses. They come at it from, probably, a little different perspective than you, but it might be similar as well, that more and more, higher education is asked to do the training and retraining of America's work force. And that doesn't always include everybody enrolled in a 4 year full-time education program.

Do we need different standards for the nontraditional student?

Mr. Blair. Yes, sir. The distinctions, I believe, are inappropriate on tightened control of institutions, but very appropriate on the population served. The population served by historically black colleges and universities and inner city community college or private career college or schools, have exactly the same problems of serving a population, making sure that they have appropriate counseling, that they have rigorous testing diagnostic systems, that they have the support services that are going to ensure to the greatest possible degree that that student who is admitted can succeed in that education and does succeed and get a job in the field for which they're trained.

We have a large number of our institutions that are private career colleges and schools that offer baccalaureate degrees and associate degrees. Many of those have very, very low default rates, in the 3 and 4 and 5 percent. They are no different than a 4 year university or college that has a 3 or 4 percent default rate with a population that's served in that similar category.

We need to make distinctions, and our proposals actually do make those distinctions. The oversight needs to be intensified on those schools that are in high risk areas. Our commission has required that those schools that serve high risk have the appropriate support services, have the diagnostic systems.

We began over 2½ years ago in a joint project with the American Council on Education that all tests to be used for ability to benefit students would have to be approved by the American Council on Education, as well as the procedures outlines as to how those tests were to be handled and rendered.

We absolutely believe that there are appropriate distinctions, but not by type and control of school, but by the population served. Our concern is that we think we have answers.

In reference to your question to Mr. Resso, we believe that it is appropriate and rigorous oversight, that it is that the triad works, that the Department of Education does the program reviews and the audits, it determines the eligibility.

Mr. **Gunderson**. Let me interrupt you there. What good does oversight do without some kind of enforcement mechanism?

Mr. **Blair**. We believe that the enforcement mechanisms can be there. The thing that we advocate most of all are outcome assessments. We believe that all of education should be brought under the purview of measuring its effectiveness. Of those who start, how many finish? Of those who finish, how many get jobs in the field for which they're trained? And if licensure or certification is involved, what is the pass rate?

What we believe that that is appropriate for somebody going into cosmetology as welding as in law and in medicine. We think that the consumer should have the information to know how effective is that institution in serving its population.

And we believe that a critical role is making sure that that information is provided and is accurate.

Mr. **Gunderson**. Anybody else? Any strong feelings on the nontraditional?

Mr. **Knutson**. I'd be happy to. Mr. Gunderson, would you rephrase the last part of your last questions so I can be most focused in my response.

Mr. **Gunderson**. I'm not sure I can rephrase it, but I can repeat it. Do we need different eligibility standards and different regulations in the delivering of financial aid for nontraditional students than for the regular full-time traditional student?

Mr. KNUTSON. I think Mr. Blair answered the question well in terms of distinguishing the kind of student that would attend an urban area community college or some of the urban area privately owned proprietary schools, as well as students who attend our historic black schools or tribally controlled schools. That tends to be one economic spectrum.

So you know the background. I don't believe you were here when I testified as I was first. I'm involved in the art institutes, which is a group of schools with 13,000 students in eight major cities throughout the United States. Our student population is essentially middle America; we have low income students and high income students, but if you look at the median range, we're in the middle.

And that factor, plus the fact that for a number of years we've had a highly disciplined financial aid management process, budgeting and whole lot of internal discipline associated with that that involved the parent and the students and part-time jobs and planned payments and loan counseling and so on, that the combination of those factors has caused the cohort default rates of students who attend the art institutes, some 13,000 who do, to be lower than those of community colleges or lower than the national averages.

But, very interesting, if you compare, for example, students at the Art Institute of Pittsburgh, where there are 2,500 students with those at the Art Institute of Houston, where there are about 1,000 students, you see that the loan default rate of students in Houston is much higher than those in Pittsburgh. Now, that's the same discipline, financial aid process, relatively same curriculum—there are some differences but it's the same core.

In other words, here you have a microcosm of two different locations, and you see a difference in the default rates ranging from 9 percent at the Pittsburgh school to 19 percent in the other. And when you get behind those numbers, you find a couple of things.

One, there is a difference, in general, in the economic level of students in one opposed to the other. In the Pittsburgh school, $25,000 to $30,000 income for dependent students, whereas that number would be closer to $20,000 in the case of the Houston school.

Also, in the State of Pennsylvania, there is an excellent student grant program which does not exist in Texas. In other words, that is a supplemental aid to students. So the economic circumstances do bear a direct relationship.

The other main thing that I wanted to say, and I tried to stress this during my testimony, is that we do have to have—the Federal Government must set through the Higher Education Act and through the actions of the Department of Education, clear standards for State licensing and clear standards for the recognition of the regional and national accrediting bodies.

And that the Federal Government has the right to do and should do because we are, in fact, talking about the relationship between students and the Federal Government and all the players who are part of that process. We have the right to do that.

And, further, the Department of Education, and I said this during my testimony, really must inspect if it's going to expect. And there is, has been, lots of power in the hands of the Department of Education which has not been exercised and can be, must be.

Mr. **Gunderson**. I understand that. But inspection without enforcement does no good.

Mr. **Knutson**. But isn't that the same, sir?

Mr. **Gunderson**. You've got to have some standard by which the department can go and make inspections, make judgments, and force the deliverer of those programs to adhere.

Mr. **Knutson**. But those—may I take just slight issue that those standards are in place. They can be further developed; for example, that the department needs to make targeted, on-sight, and this is a difference compared to what exists today, targeted, on-sight reviews of those schools which hit certain indicators such as default rates, withdrawal rates, big growth in Title IV usage and so on.

And you and I could do that if we were in the department. That's what they should be doing.

Mr. **Gunderson**. I have no dispute. I've more than used my time. Thank you.

Mr. **Andrews**. Thank you very much, Mr. Gunderson. Mr. Blair, in your statement, in one of the appendices you are quoted as having made a statement recently that a few bad apples in the private career college and school sector hurt the efforts of the majority.

On the assumption that everyone on the panel would concur with that statement—I think there would disagreement over how large or small the majority is—but on that assumption, one of the things that Chairman Ford has said throughout these hearings is that many of the decisions in the educational field recently have been budget driven, rather than policy driven; that is to say, that in the name of deficit reduction and spending outlay reduction, certain rules and standards have been established, perhaps without regard to the veracity of those standards as a matter of educational policy.

The question I have for each member of the panel is: On the assumption that you agree—tell me if you don't agree—on the assumption that you agree that there are good apples and bad apples in this field, what kinds of objective criteria or what kinds of facts distinguish between a good apple and a bad apple?

If this committee is going to try to go about the business of identifying the problem schools or "the problem", as Mr. Gunderson said a few minutes ago, what should we look for? Is it default rates? Is it job placement rates? What are the indicia of bad performance here?

Ms. **Imholz**. If I may, I might be the one on the panel who would disagree that it's just a few bad apples. That the problem, in my experience and based on the documentation and statistics, indicates to me that it's a far greater problem than just a few bad apples.

But as far as indicia go, I think that there are some objective criteria that could be looked at. I don't think default rates alone are sufficient, but job completion and placement rates are, for schools whose mission is to find jobs and to train people for jobs, those are fair things to look at and objective standards could be established on that.

In addition, I think that Congress could look at what percentage of the institution's revenues come from Federal or governmental aid. Proprietary schools and community colleges serve basically the same disadvantaged population, yet proprietary students get, 80 percent of those students get Federal aid, according to one recent report, and 20 percent of community college students get that aid.

I think that it's significant. We've heard school owners stand up in court to argue that they should keep their Federal funding going in litigation that we've engaged in. They've said, "Ninety-nine percent of our revenues are from Federal monies and you've got to keep it flowing."

So I think that that's another significant factor that can be looked at.

Mr. **Andrews**. And I realize you expounded on those in your testimony as well, which I appreciate. Anyone else have any suggestions?

Mr. **Blair**. Yes.

Mr. **Andrews**. Mr. Blair.

Mr. **Blair**. You've really set it up in two different ways. There's the question of how do you tell a good school from a bad school, and in some ways, many people seek a Michelin guide to schools. Is it a four star or a five star or is it a three star or is it a palace.

Mr. **Andrews**. A very tiring process.

Mr. **Blair**. Yes. No, never mind. I'm going to move quickly along to the other side of it. The dilemma is that it is virtually impossible to come up with a measurement that sets it out in front; however, it is very appropriate to put in oversight systems that monitor institutions because you can have an institution doing an extremely creditable job with a very high dropout rate.

The dropout rate does not mean that it is a poor quality school. It may require or have a rigor that is necessary in demand of business and industry. Many times that rigor weeds people out that can not be predicted.

One example is stenography, court stenographers. There is no way to test at the beginning of that program how proficient that individual will become. But it is an indicator. It's an indicator as you look at the population served. Is it high socio-economic background? Is it middle income? Is it poor? Is it single heads of household?

To look, also, at the effectiveness of the placement. Are they being put into jobs for which they are trained? And what is the certification and pass rate?

In addition, the financial stability of the institution. All of those are indicators that can be brought to bear, as well as consumer information coming from a variety of sources.

So while we can not, I think, suggest that we are going to have a system that is error free, I think we must promise a couple of things—that we develop a system that determines it to be quality when they first come in, that closely monitors the participants and moves quickly when something goes wrong.

Mr. **Andrews**. Anyone else care to respond? Mr. Brenner.

Mr. **Brenner**. Speaking for myself, initially I would disagree with the panelist that states that community colleges basically serve the needs of students which basically does not ring true.

If, in fact, they did serve the needs of all students, technically, there would be no need for institutions such as ours. And I do know as a fact that my school, which comprises approximately 700 students, fulfills a need that is not met anywhere else in the State of Ohio.

The Department of Education currently has program indicators. They've been in place for a long time. The triad that's been referred to on countless testimonies here and before need to be placed in effect; it needs to work.

You mention oversight. You've mentioned that everything has been budget driven. When the expose hit the fan a couple of years ago, ironically, it was the same time that the Department of Education suffered severe cutbacks. We lost regional offices, we experienced consolidation. The only schools getting program reviews were in the home towns of where the regional offices were.

I've been in the aid program since 1973, and I've had one program review, which was approximately 9 years ago. You have the program indicators in the Department of Education. Schools are required to do 2 year audits, but yet the GAO found a schools that hadn't submitted an audit for the past 8 years but yet was still in existence.

That kind of stuff is easily caught. The triggers that the department uses to assess points to trigger a program review are all in place. They can monitor Pell grant usage. They can monitor fluxes in Perkins or Stafford default rates.

What needs to be done is the plan needs to be implemented. And so far to date, it has not been implemented. I believe the Congress has a study coming from the Department of Education at the end of May dealing with program quality, which I think was performed by Westat.

Having served in a capacity at the beginning of that project, I think you would probably welcome the results of that study.

Mr. **Andrews**. Mr. Knutson.

Mr. **Knutson**. I'd like to make a couple of observations. I would be the last to deny that there haven't been really serious problems, and that you have experienced personally in the New York State area. I did want to comment on the one point of you make reference to schools whose mission is to prepare people for work, in so many words.

It might be of interest to the chair that we conducted in my organization a study of the promotional literature of 500 colleges and universities out of the 3,000 odd, and those were selected, you know, at random from all over the country to see what they were saying about jobs, about career training and so on.

And to our great surprise, and without going into all the details of the study and the statistical results, 89 percent, in effect, said that through courses that they were offering or through statements made in their catalogs or in their videos that career outcomes were important. And even the liberal arts schools made reference to the fact that liberal arts programs will prepare you for any manner of career. And we'd be happy to share that study with you if you'd care to see it.

But the point is as that's happening, also there are a number of privately owned schools, and I can speak personally on this as to the art institutes, that have more and more of their curricula in general education offerings.

And where we see with almost half of our students are transfers in from other educational institutions. They've had a year or 2 of college, some more than 4 years of college, that there's a great deal of movement, you know, within the higher education system. It's much different than it was 10 or 20 years ago.

But we need to focus our regulation on the higher education community broadly. And I do feel that with the right standards and gate keeping and enforcement, that it can apply across the board. It will work.

One other observation, if I may make, that when we—and this may be obvious, but I think the point needs to be made—that there is a substantial difference in the funding of a community college as opposed to, let's say, a privately owned school, given the fact the State is providing physical facilities and equipment and supporting operating costs, whereas that is not the case with a privately owned school.

The fact that the default rates of—we've seen studies along these lines and these have been referred to by others—default rates of urban area community colleges and of urban area proprietary schools and historically black colleges and universities are very close, a matter of three or four percentage points apart from one another, which does suggest that it's an economic consideration that we're dealing with.

And we can't lose sight of that fact. And it's remarkable, if I may say one more word, when you consider that fact that the tuition rates at privately owned proprietary schools will, of necessity, be higher because the State funding does not exist in those schools as it does with others.

And there have been studies, very credible studies, that have been done that have shown that the net cost to the taxpayer, in fact, is substantially less for students attending privately owned schools than it is at our fine community college system or with our State schools.

That is not to deny that there aren't serious problems that need to be addressed through the proper operation of the triad. And we fully support that. Thank you.

Mr. ANDREWS. Picking up on that point, I would just close with one question for Mr. Blair with respect to distinguishing between good apples and bad apples, to use your term.

What would your reaction be to the concept of peer grouping or peer analysis that would work this way? There would be a comparison of schools that deal with similar socio-economic groups of students and have similar missions, and the test of whether one falls into the good or bad category would be function of standard deviation from the norm.

For example, if schools that provide entry level skills for students in low socio-economic entity areas typically have default rates of 23 percent, if a school falls anywhere below 27 percent or

28 percent, whatever the standard deviation would be, they're okay. But if they're at 42 percent, they're not okay.

In other words, is that a way of taking into account the difficulty factor? Are there enough schools where that kind of analysis could be done fairly? And what is your opinion of it?

Mr. **Blair**. I think it's an excellent approach. As a matter of fact, our accrediting commission is looking at that very issue.

The other thing they're taking into consideration is program length. Those who can successfully complete a 600 hour program may be substantially different than a 2 or a 4 year program.

But those kinds of analysis, looking at standard deviations, are very much under consideration. The distinction is, however, that we're looking at the outcome measurements that are appropriate to the educational institution—completion, placement, certification. Default rates are too much a function of outside agents that the institution has little or no control about. It is an indicator.

But looking at the effectiveness of the institution, we believe, is a very viable process to look at, and we are already undertaking that investigation.

Mr. **Andrews**. Very well. We have two additional statements which, without objection, we will add to the record.

One is from David A. Young, who is Administrator of Academic Degrees and Program Review for the Office of Educational Policy and Planning for the State of Oregon. And the other is from our colleague, Mr. Payne, from the great State of New Jersey.

I also want to thank the panelists on behalf of Chairman Ford. Chairman Ford is attending to some very crucial business this morning that pertains to the whole Committee on Education and Labor. And he asked us to pass along to you his regrets for not being here personally, but he is obviously aware of your testimony and was called away on very, very important business.

We thank you very much for your participation, and we stand adjourned.

[Whereupon, at 1:15 p.m., the committee was adjourned, subject to the call of the chair.]

[Additional material submitted for the record follows.]

STATEMENT OF HON. DONALD M. PAYNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman, let me commend you for calling this hearing on the program integrity of the financial aid programs.

Recently the Guaranteed Student Loan Program has been the source of concern and criticism. While the program continued to grow at a rapid rate over the past 10 years, so has the loan default rate.

Therefore, instead of using the money in the program to assist students in obtaining a quality postsecondary education, more than half of the money is being used to pay for defaulted loans.

Additionally, charges of fraud and abuse continue to surface. Although most proprietary schools are doing a good job educating students, many of them have been caught defrauding and abusing the Guaranteed Student Loan Program and that is clearly not acceptable.

I hope that during this reauthorization, we can find some ways to decrease the waste, fraud and abuse and build upon the good points of the Guaranteed Student Loan Program.

Mr. Chairman, I would like to welcome several of my good friends and colleagues. First, I would like to welcome my New Jersey colleague, Marge Roukema, and my friend from California, Maxine Waters. Finally, I would like to commend my colleague, Bart Gordon, for going undercover to expose fraud and waste in the system.

I look forward to hearing your testimony as well as the testimony of all the witnesses.

BARBARA ROBERTS
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May 18, 1991

Express Letter

Thomas R. Wolanin
Staff Director
Subcommittee on Postsecondary Education
Committee on Education and Labor
U.S. House of Representatives
2461 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Wolanin:

At long last, we can foresee an end to the obvious cause of the student loan fiasco: blind federal reliance on self-interested private associations, which have been perfunctorily "recognized" to carry out duties of government.

This has been a tragic misconception of official responsibility. Not only has it wasted billions of dollars, it has lured thousands of students to educational failure and a diminished sense of their own potential.

There must be ample case law showing it to be generally illegal for any unit of government to grant or deny rights or impose duties based on the action or inaction of a private, nongovernmental body. If not, common sense tells us that accreditors are not regulators, do not wish to be regulators, and in fact constitute alliances to frustrate consumer-protection regulation if they find it inconvenient. Yet neither law nor common sense has prevailed.

Currently, the Education Department virtually sponsors accreditors through a "review" that is superficial and steeply slanted to favor approval. We could report on the direct experiences that have left us with no confidence in the department, including one in which the ED staff recommended approval of an accreditor it knew we were investigating in a matter of diploma fraud.

But even if ED could recognize accreditors competently, the use of a non-governmental intermediary makes it impossible for government to act fairly in relation to an individual school. If an accreditor does not initially qualify, is not renewed, or is dropped, any good schools in its ranks will not receive aid. That fact plausibly excuses the uncritical recognition of all accreditors.

Among several experiences of talking into a dead microphone at ED, was the department reaction to our request for help in dealing with interstate fraud. I asked what could be done about a school that was breaking Oregon laws but was in good standing with its own state, a state that would not or could not discipline a school for activities away from home. ED's answer revealed how little the department understands how schools actually operate: prevent the Oregon campus from qualifying for aid.

We explained: there is no Oregon campus. The culprit operates on the fly, with part-time "adjunct faculty," like a moveable crap game, offering illegal academic junk and making unmonitored promises to students. If we locate one adjunct professor and issue a cease-and-desist order, three will take his place whom we do not identify until it is too late. One regionally accredited school's president, with a "catch us if you can" attitude, told me he was only breaking our laws a little bit.

The most sympathetic interpretation of this situation would be that the Education Department has never understood accreditation, does not grasp its underlying purposes, let alone know its actual results. The department has seemed to believe that self-studies and "peer" inspection can substitute for legally enforceable standards. It has seemed to believe, with a puzzling credulity, that private association members would act concertedly against their inferior and fraudulent fellow members, never fearing retaliation.

We have found (1) that accreditors recognized by the secretary need serve no purpose actually related to educational quality and student protection; (2) that government is thus forcing schools to seek and pay for accreditation *solely to qualify for financial aid*, under patently inequitable conditions of variance in the qualifying standards, time, effort, and cost; (3) that some of the unaccredited schools are better educators than many accredited schools, and their students better loan risks; and (4) that the government is leading student borrowers to believe that a federal loan guarantee means a guarantee of quality for an eligible school, a deception that often eventuates in resentful unwillingness to repay the loans.

Meanwhile, like rabbits guarding lettuce, the accreditors do exactly what we would expect. They obtain as much federal money as they can get for their dues-paying members, taking millions back for a self-perpetuation lobby. In a fog of bewilderment because financially interested parties have not judged themselves severely, ED promises to figure out why the accreditors failed!

The solution is simple if not easy. Certification of schools to participate in public financial assistance programs is a public responsibility. It should be done by agencies of government. And since education is mainly a state responsibility, it should be done by states.

As you know, the National Association of State Approving Agencies points out that its members constitute an existing and proven system that monitors aid to veterans by delegation of authority to the states. We are not an approving agency, but that is exactly the model we recommend, and may be a vehicle. It comprises agencies already experienced in program audit as well as fiscal audit, with federally reimbursed enforcement of national minimum standards by the states under contract, and simultaneous administration of state laws.

Whatever will be the exact structure of a reformed financial aid certification, it needs the following elements.

1. Congress should explicitly recognize that each state if free, indeed expected, to control every school that operates within its borders. If we are to be thorough, this would include correspondence schools. Any perceived interstate commerce problems would be removed by such a mandate.

2. Congress should explicitly delegate to the states the responsibility to determine, using national minimum standards, which schools are eligible for student aid so long as they meet home-state standards and obey the laws of all states in which they operate. Procedural guidelines, if any, should call for use of external objective standards and must not bog the states down in processing the inefficient self-congratulation studies and mutual-admiration reviews that characterize private accreditation.

3. No school should be eligible to receive federal financial aid for *any* of its students while it is violating the educational laws of any state in which it operates, regardless of how it stands in the home state.

4. No school that meets the national minimum standards and obeys state laws should be rendered ineligible for financial aid merely because it is not accredited by a private nongovernmental body.

Your leadership now in reshaping the Higher Education Act can take us far beyond tinkering with a hopelessly flawed system. It can make the student assistance programs a prudent investment in our national future.

Sincerely,

David A. Young
Administrator
Academic Degrees and Program Review

Note: If it seems appropriate, please enter this letter into the record of the subcommittee's proceedings.

HEARING ON THE INTEGRITY OF THE FEDERAL STUDENT FINANCIAL ASSISTANCE PROGRAMS

WEDNESDAY, MAY 29, 1991

House of Representatives,
Subcommittee on Postsecondary Education,
Committee on Education and Labor,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., Room 2175, Rayburn House Office Building, Hon. William D. Ford [Chairman] presiding.

Members present: Representatives Ford, Kildee, Sawyer, Payne, Unsoeld, Andrews, Reed, Roemer, Coleman, Gunderson, Henry, Molinari, and Barrett.

Staff present: Thomas Wolanin, staff director; Jack Jennings, education counsel; Maureen Long, legislative associate/clerk; Diane Starke, legislative associate; Eliza Evans, staff assistant; Rose DiNapoli, minority professional staff member; Beth Buehlmann, minority education coordinator; and Jo-Marie St. Martin, minority education counsel.

Chairman Ford. I am pleased to convene the Subcommittee on Postsecondary Education for this 13th hearing in a series of 44 hearings scheduled on reauthorization of the Higher Education Act. Today is our second hearing in a series of three which address one of the most crucial issues we face during the reauthorization: the integrity of the Federal student financial assistance programs.

It is critical that we restore public confidence in the Federal student aid programs. Indeed, restoring confidence in the programs is an absolute precondition for accomplishing any other goals of the subcommittee for this reauthorization; goals which include renewing the commitment to grant assistance and extending Federal aid to students from middle income and working families.

I am particularly pleased to have as witnesses today, Ted Sanders, the Undersecretary for the Department of Education; James Thomas, Jr., the inspector general of the Department of Education; and Lawrence Thompson, the Assistant Comptroller General for Human Resource Programs at GAO.

The inspector general and GAO have done a number of studies on the Federal student aid programs in recent years and have made many important recommendations in an effort to improve the integrity of the programs. The legislative recommendations from the administration also include many suggestions for promoting program accountability.

I look forward to hearing the comments of our witnesses. I am hopeful that these hearings will bring forth suggestions for strengthening public confidence in our student financial assistance programs.

Mr. Coleman?

Mr. COLEMAN. Thank you, Mr. Chairman. I join you in the hope that these hearings will bring forward some concrete suggestions as to how we might make these student aid programs more responsible and accountable. I think that you and I and others in this Congress have dealt in the past with the needs for reforms in budget reconciliation acts, and I believe we have passed some significant reforms in that regard.

As you know, some of those reforms include requiring a 30-day waiting period before disbursement of loan funds, and making institutions with default rates of higher than 35 percent ineligible for Guaranteed Student Loan programs.

I believe the department itself now—and I'm happy to see that Mike Farrell is here, who has been recently appointed by the Secretary to reorganize this part of the department. The student financial assistance programs under his responsibility, I think, need to be tightened up, reviewed, and examined to see if, in fact, these funds are going to their proper and legitimate beneficiaries, and that this program is getting back on track.

I think the public perception has been that these programs have had some very difficult times, that there are some people who are misusing the programs, and some people are not providing quality education to the recipients. And as a result, defaults and costs of these programs continue to increase.

In the past, perhaps, the department has not been as vigorous as it should have been in overviewing and auditing institutions to see how this money was being used. So I think there is a new awareness and feeling at the department that things need to get better.

I also look forward to hearing today's testimony by Ted Sanders, Mike Farrell, Lawrence Thompson, and James Thomas, of the department. They can tell us what they are doing and to answer our questions.

I think one of the important goals of this reauthorization is to restore public confidence in these programs; programs that have gone on for many years without recognition that there has been any lack of public confidence. And I think that in the last 5 or 6 years, we've had to deal with that.

We've dealt with it, I think, significantly, but I think we must continue to do so. And I look forward to the recommendations and suggestions by the department, especially those dealing with the accrediting agencies, State licensing entities, and the role the department, itself, will play in restoring public confidence.

Thank you, Mr. Chairman.

[The prepared statement of Hon. E. Thomas Coleman follows:]

Opening Statement

By the Honorable E. Thomas Coleman
At the Program Integrity Hearing on
Reauthorization of the HEA
May 29, 1991

Mr. Chairman, I join you in welcoming the witnesses who will be testifying this morning on the issue of the integrity of our student financial aid programs, particularly the guaranteed student loan program.

Last week, the Senate Governmental Affairs Subcommittee on Investigations released their long awaited report on the Guaranteed Student Loan Program. The report makes 27 recommendations aimed at restoring integrity to the program. It is my view that the Committee needs to carefully review this report and consider including many of the Subcommittee's recommendations into the reauthorization bill.

The integrity of our loan programs is of critical concern in this reauthorization because of the increased reliance on loans for funding education and because of the many recent reports of high default rates, fraud and abuse of the system. The annual origination level of Stafford Loans has increased 71% since 1983 to approximately $12 billion today. Two-thirds of the average student's financial aid package now consists of loans. This has provided access to postsecondary education to more students than ever before. Four million students now take advantage of this opportunity to attend more than 8,000 institutions participating in the program.

But equally important with improving access is the need to ensure students are enrolling in quality programs. If the federal government is going to enable students to borrow money to go to school, it has an obligation to ensure the educational programs they are purchasing will prepare them to enter today's workforce with the advanced skills needed for an increasingly technological, global economy.

The programs must be able to retain students and provide them with training which will enable them to obtain jobs and repay their loans. Today, the net default rate for the GSL program is over 10% or approximately $2.7 billion. These are unacceptably high levels.

We also need to ensure that federal funds are being used for the legitimate purpose for which they were intended rather than for personal profits. Fundamental reforms are needed in this reauthorization to restore public confidence in these programs.

Congress and the Department of Education have already begun to address these issues and has recently enacted a number of reforms directed towards reducing the default problem, some of the most important of these are: the required reporting of graduation and placement rates for all postsecondary institutions; establishment of a 30-day waiting period before disbursement of loan checks in a student's first year; and making institutions with default rates greater than 35% over a two-year period ineligible for guaranteed student loan funds.

It has been suggested that the Department of Education, guarantee agencies and other appropriate entities are not performing an adequate number of audits and program reviews. I am very pleased at the Department's recent announcement of the reorganization of the Student Financial Assistance Programs and the appointment of Mike Farrell, an experienced manager to head the Office of Student Financial Assistance. I believe that Secretary Alexander and Mr. Farrell are on the right track in seeking to better ~~police~~ review school participation in student aid programs and establish the capability to monitor the complex financial transactions inherent in the GSL program.

Increased accountability is a crucial part of any further reforms in the system. Oversight by the triad of bodies responsible for the program: accrediting agencies, state licensing entities and the Department of

Education, must be strengthened. There is some evidence that all three need to be strengthened during this reauthorization. In these next two days of hearings, hopefully we will receive some specific suggestions for how this ought to be accomplished.

I look forward to hearing from each of the witnesses.

Chairman **Ford**. Mr. Kildee?

Mr. **Kildee**. Thank you, Mr. Chairman. Just briefly, in my neighborhood in Flint, Michigan about the only way that a person can go to college is though financial help, through programs like this. So it's very important that we not only serve more people—because there are many students in my neighborhood who I visit with who cannot go to college—we serve more, but that we do maintain the integrity of the program, and I think both go hand in hand. I look forward to this hearing.

Chairman **Ford**. Mr. Gunderson?

Mr. **Gunderson**. No comment.

Chairman **Ford**. Mr. Andrews?

Mr. **Andrews**. Thank you, Mr. Chairman. Thank you for, once again, assembling an interesting panel that we all look forward to hearing. I think there is a broad public consensus in my district and, I think, throughout the country that access to higher education for everyone from every neighborhood in our society is a good thing.

The one thing that could corrode and undercut that public consensus would be the understanding or the perception that the money is going to the wrong people, that when we set standards and guidelines as to who's eligible for financial aid funding, that that money is not reaching the students and families that it ought to reach.

I think that it's probably an exaggerated perception, but it's one that we must address in this reauthorization process so that we can continue the broad bi-partisan public support that's always existed for higher education funding and for the notion that anyone can go as far as they're willing to work to go in our society.

So I look forward to hearing the recommendations of today's witnesses, and I thank you, Mr. Chairman, for this opportunity.

Chairman **Ford**. Mr. Barrett?

Mr. **Barrett**. No formal statement, Mr. Chairman, other than to say I am pleased to be able to participate in this very timely hearing on program integrity in our student financial assistance program.

Thank you.

Chairman **Ford**. Mr. Reed?

Mr. **Reed**. Thank you, Mr. Chairman. I'm delighted to be here to participate with you on this very important topic. Out in my district and, I think, throughout the country, we face a crisis in affordability in higher education. Working families are finding it more and more difficult to pay for higher education. This is cutting into our ability to compete, in the short run and in the long run.

What's most frustrating and, indeed, infuriating is the sense that some of this loss in affordability is the result of poor management of our loan programs. It is incumbent upon us to look closely and carefully to ensure that loan programs are adequate, that we are providing resources efficiently to people who need them, and that we aren't subsidizing inefficiency or something worse than inefficiency: incompetence or, indeed, malfesance.

So we have a task before us of great importance: to ensure that we are providing educational opportunities for all Americans, doing it fairly and efficiently. It's not only the right thing to do in terms of the individual development of American citizens, but if we don't do this, our economy will not be competitive with the world in the next decade, or the next century.

This is an important task, Mr. Chairman, and I'm proud to be here with you today. Thank you.

Chairman FORD. Mr. Henry?

Mr. HENRY. No opening statement, Mr. Chairman, thank you.

Chairman FORD. Mr. Gaydos has submitted a statement for the record. And the Honorable Sam Nunn, Chairman of the Senate Permanent Subcommittee on Investigation, at our invitation, submitted a statement for the record because he could not be here. I believe last week we put the report of his subcommittee's 1 year long investigation in the record. Without objection, both of these statements will be inserted, at this point, in the record.

[The prepared statements of Hon. Joseph M. Gaydos and Hon. Sam Nunn follow:]

Opening Statement
Joseph M. Gaydos
May 29, 1991
Postsecondary Education Hearing

Twenty-five years ago, when the framers of the Higher Education Act were still in the midst of designing the various student assistance programs -- including loans and grants -- they decided that an annual audit of the student loan insurance fund should be conducted by the General Accounting Office.

Today, with the Department of Education overseeing a 24 billion dollar operation and guaranteeing over 12 billion dollars in bank-originated loans every year, we have to know what is going on. Well, as we all know, we don't.

In the 25 years since the passage of the Higher Education Act, there has never been an audit of the student loan insurance fund by GAO.

GAO has made numerous attempts to audit the student loan fund but has given up every single time because the records are so deplorably bad.

GAO has made numerous recommendations over the years to correct the Department's financial reporting problems. But the Department's efforts to correct those problems have been largely unsuccessful.

Before abandoning its latest audit attempt, GAO concluded that the Department's financial statements are unreliable because the accounting system that the Department is using does not produce accurate information.

The Department of Education Inspector General reached the same conclusion in his report of September 30, 1990. The IG also noted that three of the Department's account balances differ with the balances in its general ledger by as much as 21 billion dollars.

And, more recently, a review team headed by the Office of Management and Budget and the Education Department concluded that the Department's management practices contribute to high student loan default rates, and fraud and abuse in the student assistance programs.

That same review also found that, in many cases, the Department can't answer even basic questions about the loan program.

Because of this review, the Department adopted a plan last month to improve its management of the loan program. I sincerely hope this plan will finally fix the problems instead of simply providing more lip service that might delay implementing real solutions.

Quite frankly, I have my doubts. Twenty-plus years of watching the mismanagement doesn't raise my hopes too high.

I am concerned, however, that the loan program might suffer. My criticism of the Department should not be translated into criticism of the student loan program, which is effective and worthwhile.

What I find completely appalling is that the Department of Education -- whose responsibility it is to oversee and give accurate information about the programs -- still, after 25 years, can not provide us with verifiable, real numbers regarding the actual costs of the programs.

The idea that we must rely on assumptions and estimates when making major policy decisions that directly affect educational assistance for American students is something we can no longer tolerate.

I realize it is too much to ask that the Department get its house in order and have an audit completed before we finish this reauthorization of the Higher Education Act. Keeping auditable financial records really shouldn't be such an insurmountable task. Hopefully, there will be a completed audit before the next reauthorization. But I, for one, will not be holding my breath.

STATEMENT FOR THE RECORD
Submitted to the
HOUSE SUBCOMMITTEE ON POSTSECONDARY EDUCATION
By
THE HONORABLE SAM NUNN, CHAIRMAN
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
May 29, 1991

Mr. Chairman and members of the Subcommittee on Postsecondary Education, I appreciate your invitation to provide a statement for the record as you reasses, in the context of the Higher Education Act reauthorization, the critically important issue of student financial aid. I understand that the Permanent Subcommittee on Investigation's report, "Abuses in Federal Student Aid Programs," has already been made part of the record of these hearings and, therefore, my remarks will be brief and to the point.

As you know, in late 1989 the Permanent Subcommittee on Investigations initiated what became an intensive, year-long examination of problems relating to proprietary schools participating in the U.S. Department of Education's Guaranteed Student Loan Program (GSLP). In the course of this investigation, the Subcommittee held eight days of public hearings, at which testimony was received from dozens of witnesses representing all involved GSLP institutions and interests. The exhaustive record from these hearings, and the equally exhaustive underlying investigation by the Subcommittee staff, provide the basis for the final report, which was filed in the Senate on May 17, 1991.

The report concludes that the GSLP is riddled with fraud and abuse and suffers from severe mismanagement and regulatory deficiencies. The Subcommittee found that the mechanism on which oversight of participating GSLP schools depends -- the Triad of licensure, accreditation, and certification/eligibility -- provides little assurance that students are being provided with the quality education and/or training mandated by the Higher Education Act.

In addition, the report concludes that the lure of fast and easy program profits, coupled with ineffective government oversight, have had devastating effects on GSLP financial intermediaries -- lenders, guaranty agencies, loan servicers, and secondary market organizations. The Subcommittee also found that through gross mismanagement, ineptitude, and neglect in carrying out its regulatory and oversight functions, the Department of Education has all but abdicated its responsibility to the students it is supposed to serve and the taxpayers whose interests it is charged with protecting.

As a result of these extensive and pervasive problems, both the GSLP's intended beneficiaries -- tens of thousands of young people, many of whom come from backgrounds with already limited opportunities -- and the taxpayers have suffered. The former have been victimized by hundreds of unscrupulous, dishonest, and inept proprietary schools, receiving neither the training nor the skills they hoped to acquire and, instead being left with debts they cannot repay. Likewise, taxpayers have been ultimately billed for billions of dollars of losses in defaulted loans, while at the same time many school owners, accrediting bodies, and lenders and other financial players have profited handsomely, and in some cases, unconscionably.

In sum, the Subcommittee believes that virtually none of the GSLP's major components are working efficiently or effectively and, as a result, this vitally important program's credibility has been severely eroded and its future prospects hang in the balance. Accordingly, with the aim of restoring the program's integrity and returning it to the well-intended purposes and stated goals from which it has deviated, the Subcommittee report offers more than two dozen recommendations for further consideration. The number, breadth, and scope of these recommendations reflect the Subcommittee's view that nothing less than a comprehensive, sustained, and intensive reform effort is needed, in order for the GSLP to survive its present difficulties.

In this latter context, I look forward to the opportunity to work with you and your Postsecondary Education Subcommittee colleagues in the Senate. I am hopeful that, as a result of changes already instituted or mandated by Congress during the past two years under the leadership of your Subcommittee, the installation of the new Secretary of Education, and the recommendations of our Subcommittee report, Congress and the Administration will take full advantage of the opportunity presented in connection with the reauthorization of the Higher Education Act. Moreover, I am hopeful that as a result of this seeming convergence of interests and concerns, Congress and the Administration will act decisively to assure that the GSLP again becomes the vehicle for educating and training America's young people it was intended to, and should always, be.

Chairman **Ford**. And without objection, the prepared testimony of each of the witnesses will be inserted in the record, immediately following their comments. The witnesses can proceed to add to them, highlight them, supplement them in any way you feel will be most helpful to the record.

We'll start with Mr. Sanders.

STATEMENTS OF TED SANDERS, UNDERSECRETARY, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, DC; ACCOMPANIED BY MICHAEL FARRELL, DEPUTY ASSISTANT SECRETARY OF STUDENT FINANCIAL ASSISTANCE AND ACTING ASSISTANT SECRETARY OF POSTSECONDARY EDUCATION, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, DC; THE HONORABLE JAMES B. THOMAS, JR., INSPECTOR GENERAL, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, DC; LAWRENCE H. THOMPSON, ASSISTANT COMPTROLLER GENERAL FOR HUMAN RESOURCE PROGRAMS, U.S. GENERAL ACCOUNTING OFFICE, WASHINGTON, DC

Mr. **Sanders**. Thank you, Mr. Chairman. It is a pleasure to be with you here this morning and to participate with you as we work together to restore public confidence in the student aid program. We are also equally concerned about working, internally and with you, to restore confidence in our management of the program.

I would, at your pleasure then, summarize, Mr. Chairman, my formal testimony to you, breaking it into two parts this morning. First of all, to sketch for you some of the legislative proposals that are pertinent to today's discussions, and then also to talk with you briefly about the joint Education/OMB management study of the student aid programs.

In the legislative proposal that we'll be forwarding to you in the very near future, we do have several items that will assist in carrying forward this agenda of discussion this morning. First of all, we are proposing that you establish a minimum course of instruction of at least 6 months or 600 hours as a condition of eligibility for Title IV student aid programs, separating, basically, education from very, very short-term training for the purposes of these programs.

We are also asking that you grant authority to lenders to perform credit checks, that we delay the loan disbursements for some 60 days to the first-year students at schools that have default rates of over 30 percent, and that we require lenders to provide graduated repayment options to borrowers. None of these proposals, I believe, are entirely new. They have been discussed both by us and you in the past.

We also are bringing forward to you, though, some new proposals that would suggest ways that States might participate in the risks of borrower default: first of all, to put the equivalent of full faith and credit of the State behind a guarantee agency that has been designated for the State, and then, where defaults might exceed 20 percent, the State would pay a share, that is that portion that might range above the 20 percent.

These ideas we put forward, Mr. Chairman, to try to provide not just risk-sharing, but some incentives for States to take more seriously their obligations of oversight of schools and of lenders that are domiciled within their States.

We are also asking that we be allowed to reduce the special allowance payments by some one-fourth of 1 percent to lenders who have default rates which exceed 20 percent, thereby requiring lenders to participate in sharing the risks with us of defaults.

We also would require in our proposal that guarantee agencies submit their reimbursement claims within 45 days after the lender guarantee payments have been made. We would also require, in our proposal, Sally Mae to report any loans that they are making to lenders with an outstanding balance of over $50 million or whenever it makes any loan to a guarantee agency, thereby allowing us to keep better track of both lenders and, particularly, of guarantee agencies who may be experiencing difficulty.

We are also asking for authority to specifically require guarantee agencies to submit to us management plans where both administrative and financial reasons would exist for their doing so. That grows out of our experience with HEAF and, now, looking at our experience with other guarantee agencies. And this authority to the Secretary to require management plans seems very, very appropriate to us as we seek to work with agencies that may be about to or are experiencing difficulty in assuring that they do, indeed, address those problems and work themselves out of particular difficulties.

We're also asking that you require minimum reserves for agencies whose administrative or financial condition is weak. We're also asking you for the direct authority to be able to terminate a guarantee agency's agreement when we determine that it's no longer able to perform its duties.

We're asking that you give the authority to the Secretary to, under those circumstances, assume the guarantee agency functions whenever the agency withdraws or happens to be terminated, thereby taking us out of the precarious kind of situation that we found ourselves in during the HEAF difficulty of not necessarily having the direct authority and directly manage a difficult situation.

We also are suggesting that you establish new conflict of interest requirements on members of boards of guarantee agencies and the members of their families with other corporate entities that may be doing business in the student aid field.

We're also asking that you require driver's license numbers and other borrower locator information that we may use in the collections process, as well as authority to garner a defaulter's wage.

We also are working on a couple of other proposals that we would like to refine and to work on with you. One of those would be trying to reach a determination of what might be satisfactory progress towards a degree or completion, for determining a student's continuing eligibility for the program.

We also, Mr. Chairman, last fall, after the early experiences with the HEAF situation, went to the Office of Management and Budget and asked them to help us to put together an intense study of the management of student aid programs in the department. Specifically, what we wanted out of that process was not, simply, to identify those actions that we might come to you and propose that would help us to address the problem, but to look very, very specifically at areas where we already had the authority and that we might act to improve this program.

The findings are many. They break out into four general areas. Our conclusions, to summarize them, was that basically our management capacity was inadequate for these programs, that we had too few financial analysts on staff that could help us to exercise the proper oversight of this program, and, in many cases, our data system could not provide us even answers to very basic questions about the program and its cost-effectiveness.

Generally, the recommendations, as I mentioned, fell into four broad areas. First of all, assuring that only legitimate educational providers participate in the program. This ties to yours and Mr. Coleman's opening comments about the gatekeeping functions and how we might go about strengthening that triad of accreditation, State licensure, as well as the department's certification process. It also gives us some very specific recommendations as to how we might improve our monitoring in both specifically targeting and the quality of those efforts.

The second broad area dealt with the improvement of the department's oversight of participating guarantee agencies and lenders. It calls for specific actions that would strengthen our financial oversight of those institutions, would provide minimal solvency requirements, and calls for stronger sanctions where those are necessary.

The third area dealt with the structure of the program, and generally called for our consolidating all of the student aid operations under one responsible management official; that means directly reorganize the Office of Postsecondary Education, and includes actions all the way to the support of adding staff which we have requested in combination of our 1991 and 1992 fiscal year appropriations—the addition of some 150 FTE to help us in the management of this program.

And the fourth set of actions dealt with steps that we could take to improve our management of information of data in this particular program. One of the things that we concluded as we went about this process and as the Secretary had indicated to you when he appeared in the general presentation of our reauthorization request, we heard everywhere we went, as we have talked about, the improvement of this program was not only the need to put all of the pieces together under one cognizant authority, but to hire a very, very strong manager to carry out those functions.

And we believe, Mr. Chairman, members of the committee, that the Secretary has done that with the employment of Mike Farrell, who is seated here at my right for the panel discussion today, so that he might also participate with us, because he is already taking very aggressive and affirmative steps to implement the recommendations contained in this joint report.

I would stop there, Mr. Chairman, and let the discussion take us where it might.

[The prepared statement of Ted Sanders follows:]

Testimony By

Ted Sanders
Deputy Secretary
U.S. Department of Education

before the

House Subcommittee on Postsecondary Education

on

Student Aid Program Accountability and Integrity

Wednesday, May 29, 1991

Mr. Chairman and Members of the Committee:

I am pleased to appear before this Committee today to testify about the Department's plans to promote greater program accountability and integrity in the student aid programs.

For the past 25 years, the Student Financial Aid Programs have reflected our national commitment to ensuring a postsecondary education opportunity for all Americans. Some 5.8 million students attending 8,000 postsecondary institutions have received nearly $18 billion this past school year. In the Guaranteed Student Loan Program alone, new loan volume in 1990 was nearly $11 billion.

There is, however, a need to restore public confidence in these programs. Default costs, which have now reached $2.7 billion this year, are clearly an indication of the need to take further action. Investigations and studies by both the Department and the Congress have revealed weaknesses in the current programs.

In addition, over the past six months we undertook with the Office of Management and Budget a study of our student financial aid management practices. These studies have shown that there are two major areas that need to be addressed: structural changes to the programs that would require legislation and improved management by both the Department and other entities involved in the administration of these programs. In both these areas, the Department has taken aggressive steps under current law and made numerous legislative proposals. Let me highlight some of these.

Recent Changes to Control Default Costs

In 1989, the Department published default reduction regulations that authorized initiation of limitation, suspension, or termination (LS&T) proceedings, beginning in 1991, for schools with annual default rates above 60 percent. Limitation actions impose additional requirements for schools to participate in the student aid programs, such as requiring more frequent audits. Suspension actions temporarily cause schools to lose their program eligibility for up to 18 months. Termination actions result in the loss of a school's eligibility for at least 18 months. Based upon the 1989 cohort default rates expected to be released on July 1, 1991, 50 to 100 schools may be subject to LS&T action on this basis by late summer.

Subsequently, the Omnibus Budget Reconciliation Act of 1990 provided additional LS&T legislative authority for all GSL programs. Beginning this summer, schools with a 35 percent or higher default rate for three consecutive years (1987 to 1989) will lose their eligibility to participate in the GSL program for three years. As a result, many schools with default rates above 35 percent will no longer be eligible, and in subsequent years additional schools may lose their eligibility as the threshold declines to 30 percent in 1993.

As another good example of Administration proposals accepted by Congress, the Omnibus Budget Reconciliation Act (OBRA) of 1989 barred students attending schools with default rates of 30 percent or more from receiving Supplemental Loans to Student (SLS) loans. The Secretary was also authorized to take short-term emergency actions to bar from participation in the student aid programs those schools and lenders with fraudulent or improper practices. These emergency actions immediately cut off funds to these schools until the conclusion of an administrative hearing process. To date, 24 emergency actions have been taken. In addition, the Department is currently reviewing two cases which may lead to emergency actions.

In recent years, we have also increased the number of program reviews of schools, guarantee agencies and lenders that are conducted by Department personnel. Program reviews uncover many violations that may subject schools to LS&T actions. Our program reviews have risen from a low of 627 in 1987 to a high of 1,975 reviews in 1990. Sixty-seven termination actions have already been initiated in 1991, 22 of which resulted from the 1989 authority to take emergency actions to suspend funding for schools.

While a good start, these steps have not gone far enough to correct the problems. Many legislative changes proposed by the Administration in the past have not been accepted. Thus, as part of our HEA reauthorization proposals, we are recommending additional actions that we believe are necessary to promote further accountability in the Guaranteed Student Loans program. Included in our legislative package are default reduction proposals, guarantee agency improvements, defaulted loan collection proposals, risk sharing, and efforts to reduce waste, fraud and abuse. These proposals are essential tools and deserve to be enacted.

Default Reduction Proposals

Our default reduction proposals include establishing a minimum course length of six months or 600 hours as a condition of eligibility for all Title IV student aid programs, requiring lenders to perform credit checks, delaying loan disbursements for 60 days to first-year students at schools with default rates over 30 percent, and requiring lenders to provide graduated repayment options to borrowers.

Guarantee Agency Risk Sharing and Improvements

To promote more effective oversight of guarantee agencies and lenders, we are proposing to require States to share the risk of borrower defaults. We propose to tie State and lender costs and school participation to their performance in controlling the incidence of student loan defaults. States can help reduce defaults by monitoring guarantee agency operations more closely and by strengthening their process for licensing schools.

We would require each State to back its designated guarantee agency with the equivalent of the full faith and credit of the State. We would also require States where school default rates exceed 20 percent to pay a share of the default costs. We are also proposing to reduce special allowance payments by .25 percent to lenders with default rates exceeding 20 percent.

To improve guarantee agency operations, we propose requiring guarantee agencies to file for reinsurance claims within 45 days after the lender guaranty payment is made; reimbursing guarantee agencies for actual administrative costs, up to one percent of loan volume; requiring reports from the Student Loan Marketing Association whenever it makes a loan to a lender with an outstanding balance exceeding $50 million, or whenever it makes a loan to a guarantee agency; and requiring guarantee agency management plans, including possible reserve minimums for those agencies whose administrative or financial condition is weak.

We are also proposing to terminate a guarantee agency's agreement if the Secretary determines that the agency is no longer able to perform its responsibilities. Our proposals would authorize the Secretary to assume certain guarantee agency functions, to the extent he determines necessary, when a guarantee agency withdraws from the GSL program or if its agreement is terminated.

The Department's proposals would also prohibit a guarantee agency from permitting their officers, employees, and their family members from having a direct financial interest in any lender, secondary market, contract or, servicer for the guarantee agency. The Secretary would also have authority to impose any or all sanctions imposed by one guarantee agency on schools or lenders on a nationwide basis. This would eliminate a school or lender's ability to "shop around" for another guarantee agency when sanctions are imposed by their current guarantee agency.

Defaulted Loan Collections

Proposals to improve defaulted loan collections would include requiring students to provide a driver's license number and other borrower locator information. They would also authorize guarantee agencies and the Secretary to garnish a defaulter's wages.

Other Proposals

We are currently developing and investigating alternative approaches for ensuring that Federal aid goes only to those students who recognize the importance of education and who take their studies seriously. This includes an assessment of the current statutory provision that requires a student to make "satisfactory progress" toward a postsecondary degree or certificate. We are also examining how best to control the Federal costs for short-term vocational programs, where there are generally higher defaults.

In addition, we are proposing to tighten the definition of an independent student. It is true that a student who is financially independent should have his or her need for student aid determined without regard to the resources of his or her family. However, the current definition is open to potential abuse.

Improved Departmental Management of the Student Aid Programs

In addition to our legislative proposals, the Department is thoroughly overhauling its management of the student aid programs. On April 8, 1991, Secretary Lamar Alexander and Office of Management and Budget (OMB) Director Richard Darman announced a sweeping student aid management improvement plan. This plan was developed by a joint management review team of about 65 people from the Department, OMB, and six other Federal agencies, who assessed the Department's internal management practices in the area of student aid.

Management Review Team Findings

The report found that, in addition to the fact that too many shoddy schools participate in the student aid programs, the Department failed to react early and take effective action to prevent the collapse last year of one of the nation's largest student loan guarantee agencies, the Higher Education Assistance Foundation (HEAF).

In addition, the team noted that the management capacity of the Department's Office of Postsecondary Education (OPE) remains inadequate. OPE has too few qualified financial analysts on its staff. This limits its ability to review and enforce the requirements of the student aid programs. Further, GAO reports it cannot audit the GSL program because accounting records are poorly maintained. In many cases, the Department is unable to answer some basic questions about the GSL program and its cost effectiveness. These weaknesses in the Department's management practices have made addressing the high loan default rates more difficult, as well as encouraged fraud and abuse by participants in the student aid programs.

Management Review Team's Recommendations

The report recommends four major improvements: first, ensure that only legitimate educational providers participate in student aid programs; second, improve Departmental oversight of participating guarantee agencies and lenders; third, consolidate all student aid operations under one responsible official; and fourth, improve information management.

Through strengthened and more coordinated "gatekeeping" and monitoring, the Department can ensure that only legitimate educational providers participate in the student aid programs. We are very concerned about the adequacy of our current "gatekeeping" system for postsecondary education institutions which encompasses accreditation, State approval, and Department certification. Improvements are already underway in the Department's procedures for certifying and monitoring the administrative capacity and financial stability of participating institutions. The Secretary is currently reviewing the need for legislative changes in this critical area.

By working more closely with licensing boards and accrediting agencies, we can establish higher eligibility standards for institutional participation in the student aid programs. We can also improve audits, monitoring, and sanctions with respect to schools with inadequate financial resources and practices. Through enhanced reviews of initial program eligibility and improvements in the process for terminating participation in the GSL program, we can ensure that schools that are designed for the purpose of bilking the U.S. government--and the taxpayer--will be eliminated from our student aid programs.

Improved oversight of guarantee agencies and lenders that participate in the GSL program can provide an early warning of problems and timely Departmental intervention where necessary. This will require greater financial oversight, establishing management plans which can include minimum financial solvency requirements for the guarantee agencies, and future avoidance of problems of guarantee agencies like HEAF. Increased sanctions against agencies and lenders who fail to comply with GSL administrative and financial requirements would further support this effort.

Consolidation of all Department student aid operations under one person will require a reorganization of Office of Postsecondary Education. Enhanced financial management will include increased training to revise and refine the skills of existing staff, additional qualified staff (up to 150 more FTE than in 1990, if the 1992 budget request is approved) assigned to financial, analytical, and compliance activities; and improved systems and procedures for control and decision-making, including correcting the serious weaknesses in the current management information systems.

The Secretary has appointed Michael J. Farrell as Deputy Assistant Secretary for Student Financial Assistance and Acting Assistant Secretary for Postsecondary Education. He brings a strong management perspective to the position from his experience in private industry. Mr. Farrell has overall responsibility for implementing the Administration's student aid management reform plan. To help him in this task, recruitment efforts are already underway to bring on additional staff with the necessary expertise.

I would be glad to discuss our proposals in more detail or to answer any of your questions.

Chairman FORD. Mr. Thomas?

Mr. THOMAS. Thank you, Mr. Chairman, members of the subcommittee. I am pleased to be here today to provide comments regarding integrity in the Federal student financial assistance programs and to offer recommendations for consideration during reauthorization of the Higher Education Act.

My testimony this morning addresses the Federal Student Assistance programs as they currently exist. I would note also that these recommendations are my views as inspector general of the Department of Education and do not represent the views of the administration.

The OIG has performed numerous audits, investigations, and inspections of schools that participate in the Federal Student Assistance programs under the Higher Education Act. And in this testimony I could recount numerous horror stories we have found, but the key issue at this juncture is not whether a problem exists or whether the problem is serious; the record demonstrates that the answers are clearly yes on both counts.

Instead, based on the OIG's oversight of these programs, I will offer our perspectives and proposals in several areas. On accreditation: we found that the department's accrediting agency recognition process did not include adequate research and analysis to assure that only reliable agencies were recognized by the Secretary. In addition to administrative changes, we recommended in our report that enabling legislation require accrediting agencies to develop and consistently apply specific criteria for evaluating institutional quality.

Secondly, we noted instances in which accrediting agencies possess information regarding serious financial compliance or other problems at schools, but are reluctant to share such information with ED or other oversight entities due to fear of liability. We would recommend that the HEA be amended to require such sharing of information.

Concerning institutional eligibility, our work disclosed that the department cannot be assured that all institutions that are determined to be eligible to participate in the SFA programs met or continued to meet the eligibility requirements. We suggested administrative improvements which will strengthen the process.

In addition, however, legislative consideration should be given to establishing performance-based eligibility requirements in the reauthorized HEA, which would be applied by the department. In addition, since the termination of eligibility is heavily dependent upon State licensure, consideration should be given to legislation requiring States to establish and consistently apply adequate standards for determining the quality of institutions they license.

In a general area based on audit, investigative, and inspection experience related to institutional eligibility, we urge that consideration also be given to the following legislative changes: Unless adequate controls can be legislated to provide for effective control of foreign and correspondence school, such institutions should be barred from participation in the programs.

The HEA should be amended to require owners of corporate proprietary schools to be personally liable for school losses. So that when the schools close or otherwise fail to meet their financial responsibilities, owners are not able to escape with large personal profits while the taxpayer and the students are left to pay the bill.

Legislative changes appear necessary to prevent program abuses associated with course stretching, perhaps, by requiring that course length be certified as appropriate by the State or by the accrediting agency as a condition of course eligibility.

Schools that use commissioned salespersons should not be eligible to participate in the programs, because the current limitation that they not "promote the availability of any Title IV loan programs" is unenforceable and wholly inadequate to prevent abuses.

Our reviews of the department's process for certifying schools as administratively capable and financially responsible disclosed that these processes did not prevent deficient schools from program participation. Generally, the department agreed with our findings and is implementing many of our recommendations. While much is being done, the Congress should ensure that the reauthorized HEA provides the department with all the authority needed to prohibit administratively weak or financially troubled institutions from program participation.

We have found that tuition costs now being charged by certain proprietary schools are not a reflection of the school's costs of instruction and operation but merely a reflection of the maximum financial aid that's available. Accordingly, we urge that consideration be given to enactment of a provision that would require institutions applying to participate in Student Financial Aid programs to disclose the basis for the tuition charges.

In the PLUS program, we have found applications with false information, and often the student did not exist. We have recommended that the PLUS program regulations be revised to require that the PLUS loan checks be sent directly to the school and be made co-payable to the borrower and the school. To the extent that legislative authority does not exist in current law to allow these changes, such authority should be provided in the reauthorized HEA.

Despite the overwhelming presence of secondary markets in the loan programs—about 40 percent of the outstanding loans are owned by secondary markets—and loan servicers managing over 40 percent of the outstanding loan portfolios, our reviews disclosed that there are no existing audit requirements, or existing audit requirements applicable to those entities do not provide the department with the information needed to protect the integrity of SFA funds held by these entities.

Our recent work in the secondary market and the servicer area disclosed that additional audit requirements are needed to improve the oversight of these student loan participants.

Mr. Chairman, that concludes the summary of my statement. I would be happy to respond to questions as you see fit.

[The prepared statement of James B. Thomas, Jr. follows:]

STATEMENT OF

JAMES B. THOMAS, JR.
INSPECTOR GENERAL
U.S. DEPARTMENT OF EDUCATION

BEFORE THE

SUBCOMMITTEE ON POSTSECONDARY EDUCATION
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

Regarding

Integrity in Federal Student Financial Aid Programs

May 29, 1991

Mr. Chairman and Members of the Subcommittee --

I am pleased to be here today to provide comments regarding integrity in the Federal student financial assistance (SFA) programs and to offer recommendations[1] for consideration during reauthorization of the Higher Education Act (HEA).

My testimony this morning addresses the Federal student assistance programs as they currently exist. To the extent that the Subcommittee is considering alternative approaches to Federal student assistance and could benefit from our views regarding controls needed to protect the integrity of alternative programs, we would be pleased to assist the Subcommittee further as you might request.

The OIG has performed numerous audits, investigations and inspections of schools that participate in the Federal student assistance programs under the HEA; the numerous and serious instances of fraud and abuses disclosed -- particularly at proprietary trade schools -- have led the

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[1] Summary List of Recommendations is Attached.

OIG to identify these programs as the most vulnerable to fraud and abuse in the Department.

In this testimony I could recount numerous horror stories of students who were left with large loan obligations but inadequate training to obtain jobs to pay those loans; of schools which closed after they came under scrutiny, leaving students without the means to complete their education and still liable for large loan obligations; of schools which continued to participate in the Federal programs despite growing unpaid refund liabilities and other regulatory violations; of corporate proprietary schools that declared bankruptcy, leaving large liabilities to students and the Federal government while the owners reaped large profits which cannot be reached to satisfy the liabilities. The OIG has in its Semi-annual reports to Congress over the last two and one-half years reported on cases involving all of these abuses and more.

But, rather than recount particular examples of cases where our OIG investigators, auditors and inspectors have uncovered fraud and abuse, let me try to illustrate more succinctly the magnitude of the problem in the proprietary school area with these statistics.

For the years 1987, 1988 and 1989 --

o At the ten proprietary schools representing the largest amounts of Pell grants and Federally insured loans, students received over $1 billion in Federal aid (more than twice the amount received by students attending schools in the eleventh through twentieth positions);

- Of these ten proprietary schools, OIG reviews have uncovered regulatory violations at six of them, and in at least four cases, our OIG investigations have uncovered evidence of criminal activity;

- The average 1988 cohort default rate for these ten proprietary schools was 36 percent;

- These ten top recipients of Title IV funds have had significant increases in funding levels in the last three years -- six received an increase of more than 60 percent in Title IV funds in one year alone;

- After the commencement of an OIG audit or investigation, four of the top five schools closed their doors and/or stopped receiving Title IV funds, and the other was a chain of schools that closed many of its individual schools after declaring bankruptcy. Students at these five schools received in excess of $757 million in Federal student assistance funds;

- The proprietary school whose students received the most Federal aid -- a correspondence truck driving school currently under investigation -- alone received almost a quarter of a billion dollars, and its cohort default rate for 1988 was 46 percent;

- The school that received the second most Title IV funds for its students in those years alone ($160 million) -- also a correspondence truck driving school against which the Department of Justice has pending a multi-million dollar civil suit based on our work which showed that the school was never eligible to participate in any Title IV program -- is now in bankruptcy and claims to be without assets to pay even the outstanding refunds owed to former students.

These statistics demonstrate that Title IV-funded proprietary trade schools can be big business, and participation in these Federal programs is worth literally hundreds of millions of dollars to owners. Abuses by even a small number of schools can cost taxpayers huge sums. Moreover, the volume of Federal funds at stake in any one such school can change dramatically in a very short time frame, so that large amounts of federal funds may be placed at risk before appropriate regulatory action can take place, under the current statutory and regulatory scheme.

One other important point needs to be emphasized: all of the top ten proprietary schools are corporations and under the programs as currently administered, the Federal government requires no guaranty or undertaking of personal responsibility by the owner(s). Therefore, when liabilities mount up and are uncovered after an OIG audit or investigation or

Department review, the Federal government must look to the corporation alone to satisfy Title IV-related liabilities.

In our experience, as in most of these cases, the corporations at that juncture are without the assets to meet these liabilities, and thus students and taxpayers cannot recover amounts even approaching their losses. In these cases, the owners walk away with millions dollars in Federal student assistance funds, and it is difficult if not impossible to reach the owners' gains.

The abuses and loopholes in the student assistance programs as they currently exist and are currently administered are well known to the Congress; the Senate Permanent Subcommittee on Governmental Affairs held hearings last year that documented abuses on the part of proprietary trade schools. Congress in the 1990 Budget Reconciliation Act made a good start at enacting reforms to address the ever increasing cost of these programs due to such abuses, particularly the provisions making high-default schools ineligible to participate in the Federal Title IV programs as well as the tightening of the so-called "ability-to-benefit" requirement.

But the above-cited statistics and track record for these programs where some proprietary trade schools are concerned demonstrate that a great deal more reform needs to be legislated to ensure that Federal taxpayers pay for the services of only quality schools offering access to quality education and training likely to enhance students' job skills, and that students and taxpayers are adequately protected.

The key issue at this juncture is not whether a problem exists or whether the problem is serious -- the record demonstrates that the answers are clearly "yes" on both counts. The issue facing you as legislators today is specifically what should be done to address these problems. Based on the OIG's oversight of these programs, we offer our perspectives and proposals in the following areas.

Accreditation

Generally, our review in this area disclosed that the Education Department's (ED) accrediting agency recognition process did not include adequate research and analysis to assure that only reliable agencies were recognized by the Secretary. Further, the process did not hold the accrediting agencies accountable when they continued to accredit schools with high default rates or schools that abused the Title IV programs. Specifically, the process did not adequately evaluate those agencies that accredit a large number of proprietary institutions that have high default rates and other deficiencies. However, despite these weaknesses and the lack of assurances provided by the recognition process, the Department uses the accrediting agencies' decisions as one of the two primary criteria to determine schools' eligibility to participate in the student financial assistance programs. As a result, billions of dollars available to students each year through loans and grants are at risk, in part because the recognition process does not assure that the accrediting agencies use appropriate and effective policies to accredit schools.

Our report on accreditation recommended controls to strengthen the Department's review of petitioning accrediting agencies. Specifically, we recommended that ED conduct more in-depth reviews of those accrediting agencies that accredit schools that represent the greatest risk to the Title IV funds. Further, we recommended that ED request third party information on the performance of accrediting agencies as a first step in the review process so that the information can be used in planning the review.

If the Department implements the recommendations in our audit report on this area, particularly the recommendations concerning more in-depth analysis of agencies that accredit schools that represent the greatest risk to the student financial assistance programs, we believe that the accrediting agencies will be held more accountable when accrediting or continuing to accredit sub-standard schools. Also, if these recommendations are implemented, the general public could place greater reliance on the Department's process for recognizing only those agencies that are reliable authorities on the quality of education and training provided by accredited schools. In turn, the Department's process for determining the eligibility of schools to participate in and draw down the billions of dollars available through the Title IV programs will be strengthened.

In addition to the administrative changes cited in our report, we believe certain legislative amendments are needed to further strengthen the accreditation process. First, to ensure effective oversight of institutions participating in SFA programs, enabling legislation should require that accrediting agencies develop and consistently apply specific criteria for evaluating institutional quality. Currently, the Secretary, as well as the student and taxpayer, must rely on accrediting agencies as reliable authorities regarding program quality, but current law requires no specific standards by which program quality is evaluated.

Secondly, we have noted instances in which accrediting agencies possess information regarding serious financial compliance or other problems at schools, but are reluctant to share such information with ED or other oversight entities due to fear of liability. Therefore, because it appears that instances of program abuse could be reduced if accrediting bodies were required to share such information with the Department, we recommend that the HEA be amended to require such sharing of information.

Finally, we recommend that section 1205 of the HEA be amended to include language prohibiting persons serving as members of the National Advisory Committee from engaging in any Committee activities that would result in a conflict of interest, and that Section 1205(a) be expanded to require appointment of some Committee members who are experienced in the management and financial operations of higher education institutions.

Institutional Eligibility

The current procedures for determining postsecondary institutions' eligibility to apply for participation in the Title IV student financial assistance programs rely primarily on the procedures of accrediting agencies and State licensing agencies. Therefore, eligibility to participate in the SFA programs is being decided primarily by accrediting agencies and States, rather than the Department. Also, because of other deficiencies in the procedures for conducting the initial evaluation and the four year update, we concluded in our report on the eligibility process that the Department cannot be assured that all the institutions it determined to be eligible to participate in the SFA programs met or continue to meet the eligibility requirements.

To strengthen the eligibility process, we have recommended that ED:

- improve procedures for identifying individuals convicted of fraud involving Federal funds and immediately terminate institutions' eligibility when they fail to meet the eligibility criteria;

- take the necessary actions to update both automated and manual eligibility files;

- establish and implement a written plan to have the over 4,000 institutions whose eligibility is currently overdue, redetermined within a reasonable time frame;

- immediately notify all pertinent ED offices and the guarantee agencies by telephone or FAX machine when institutions' lose their eligibility, and confirm that stop-payments were placed on the institutions;

- establish a separate office to handle complaints, and to advertise the office so that the public is aware of it and is better able to direct its complaints.

We believe that, if implemented by the Department, these improvements will strengthen the process by which schools are determined eligible to participate in SFA programs. In addition, however, we have noted areas where legislative change appears needed to adequately ensure that only legitimate, quality institutions are determined eligible for SFA program participation. For example, the definitions of "eligible institutions" contained in current law make no reference to the quality of institutional performance. Therefore, it is difficult to deny eligibility of a school if it is licensed, accredited and meets certain administrative requirements, even if its performance record is poor.

Consideration should be given to establishing performance-based eligibility requirements in the reauthorized HEA.

Additionally, there appears to be a need to clarify the roles and the responsibilities of the Federal government, the States, and the accrediting agencies in the institutional eligibility determination process.

Before the Department determines an institution to be eligible, it requires that the institution be licensed by its State and accredited by an accrediting agency recognized by the Secretary. Since both the States and the accrediting agencies have significant variation in their requirements, the eligibility determination process does not assure a consistent level of quality for the institutions considered eligible to apply for participation in the SFA programs.

Since determination of eligibility is heavily dependent upon State licensure, and because there exists wide variation among States regarding their licensure requirements, some minimal State licensure standards appear needed. Consideration should be given to requiring States to establish and consistently apply adequate standards for determining the quality of institutions they license.

Based on our audit, investigative and inspection experience related to institutional eligibility, we urge that consideration also be given to the following legislative changes.

- The sovereignty of foreign governments hampers imposition of requirements to ensure effective administration of student loan programs by foreign schools, thus there is currently no means of ensuring the quality of education provided or proper administration of loan programs by such institutions. Similarly, the nature of correspondence schools makes it difficult if not impossible to ensure that such schools provide high quality, effectively administered programs. Thus, unless adequate controls can be legislated to provide for effective control of foreign and correspondence schools, such institutions should be barred from participation in HEA Title IV programs.

- The HEA should be amended to require owners of corporate proprietary schools to be personally liable for school losses. Current law allows Title IV participation by corporate proprietary schools, but does not provide a means of holding school owners personally liable for losses caused by a school's failure. Thus, when schools close or otherwise fail to meet their financial responsibilities, owners are able to escape with large personal profits while the taxpayer and student are left to pay the bill. Further, we recommend that the legislation be amended to ensure that school owners are held personally liable for the accuracy of information, claims or other statements on which institutional eligibility is based.

- Legislative changes appear necessary to prevent program abuses associated with course stretching. Course stretching is the artificial expansion of courses beyond the length needed to prepare students for employment so that such courses will qualify for Federal student aid. One approach to solving this problem would be to amend current law to require that course length be certified as appropriate by the State or by the accrediting agency as a condition of course eligibility.

- Schools that use commissioned salespersons should not be eligible to participate in Title IV. The abuses created by sanctioning financial incentives for getting students enrolled regardless of their interest, ability and needs have been documented. The current HEA limitation on commissioned salespersons in 20 USC 1085 -- that they not "promote the availability of any [Title IV] loan programs" -- is unenforceable and wholly inadequate to prevent abuses.

Institutional Certification

Our reviews of the Department's process for certifying schools as administratively capable and financially responsible disclosed that these processes did not prevent deficient schools from Title IV participation and did not assure that students and the Government were protected when schools failed before providing all educational services due. For instance, in the two and one half year period ended June 30, 1988, we estimated, based on information available from the guarantee agency tape dump and within ED, that 53 schools closed before all educational services were received by the students. As a result, we estimate as many as 10,000 students lost the benefit of ED loans and grants worth about $30 million for which either the students or the Government must assume responsibility. ED did have surety arrangements with seven of the schools; however, the arrangements only covered about 9% of the total guaranteed loans at risk and did not cover ED's cash advances for Pell grants to the institutions. Further, proceeds from only one of the surety arrangements were collected because ED's controls were not adequate to assure that claims and collections were made when schools closed.

The administrative capability certification process relied to a great extent on the integrity of the preparers of the certification applications because validation of the representations, such as on-site testing, was not performed. Further, institutions were routinely certified and recertified despite indicators of administrative capability problems (e.g., high withdrawal and default rates). As a result, billions of dollars were at risk in part because the Department did not take action to limit the risk when indicators of impaired administrative capability were present.

Generally, the Department agreed with our findings in these matters and is implementing many of our recommendations to strengthen the institutional certification processes and thus better protect students and taxpayers from financial loss.

While much is being done to improve the certification process, the Congress should ensure that the reauthorized HEA provides the Department with all authority needed to prohibit administratively weak or financially troubled institutions from HEA Title IV program participation. In addition, we recommend specifically that Section 490 of the HEA be changed to include as criminal conduct, the attempt to commit those offenses identified. Currently, a person who commits any of the mentioned offenses cannot be prosecuted under this statute unless he/she actually receives money. Thus, a person submitting false statements, for example, can abuse the Title IV programs, but not be penalized unless such action results in receipt of funds.

Major Problems Caused By Weaknesses in Accreditation, Certification and Eligibility

Our audits, investigations and inspections of schools participating in HEA Title IV programs have identified several major issue areas that appear to result from weaknesses in the accreditation, eligibility and certification processes. Among these are the following:

Branch Campuses. Proprietary schools must be accredited, licensed by their State and operate for two years before they can be eligible to participate in the student aid programs. However, many schools have circumvented these requirements by creating branch campuses. As a result, they have expanded rapidly beyond their administrative and financial capability to control properly the programs and fulfill responsibilities to students. While many are concerned about the growth of branch campuses, more needs to be done to correct the problem.

As the two year rule has always been and still is part of the legislation governing the Title IV programs, we believe that most of the problems could be eliminated by merely applying the two year rule to branch campuses. Reluctance to enforce the rule, combined with the lucrativeness of the school business, may have lured some long time school owners away from the business of educating students to profiting from students. Further, the recent growth in the proprietary school industry, aided significantly by branch campusing, has placed a strain on both State licensing and accrediting agencies, to the point that their ability to control quality and ensure accountability has been significantly reduced. We have recommended that the Department take steps to enforce the two year rule as a means of regulating branch campus expansion.

Ability to Benefit. Recent HEA amendments requiring students without high school diplomas to pass an independently-administered, nationally recognized test as a condition of SFA eligibility should reduce abuses in this area. However, we are concerned that school owners are already attempting to circumvent these new requirements. We were informed of one case, for example, where a family member of a school owner was establishing a company to administer the nationally recognized tests to non-high school graduates. This, is, in our view, a less than arms length relationship which would violate the independence intended in the new HEA provisions. The Congress should consider defining the term "independent" as it relates to testing of non graduate SFA applicants.

Course Length and Course Stretching. Our reviews have found that in order to qualify for participation in student aid programs, some schools have misrepresented the length of their courses, asserting they are longer than they actually are. ED's procedures for reviewing reported course length data do not include verification of the actual hours required to complete the courses. Neither State licensure agencies nor accrediting bodies are required to verify course length representations by applicant institutions.

In order to qualify for student aid, some schools have developed programs that are longer than needed to qualify students for gainful employment. This results in needless time in class and inflated debts to students. Adequate oversight could have prevented schools from doing this.

To correct these problems, we recommended that the Department seek legislative authority to approve course length, assign clear responsibility for determining course length, and establish a mechanism for monitoring that determination.

Clock to Credit Hour Conversions. Credit hours are used as course length measures at degree-granting institutions where credits may be transferred, while clock hours are used by certificate-granting schools. Clock and credit hour equivalencies for measuring course length are present in existing regulations, however, ED accepts conversions that vary from these equivalencies if such conversions are approved by accrediting agencies. Our review showed that some schools made unreasonable conversions simply to qualify previously ineligible clock hour programs as eligible credit hour programs. We believe action must be taken to limit abuses that occur when schools assign unreasonable credit hours to clock hour training programs solely to obtain additional student aid funds.

Two possible approaches to solving this problem would be to (1) establish statutory equivalency between clock hours and credit hours or (2) reserve credit hour course measurement for degree-granting institutions.

SLS and PLUS Programs

Additional controls specific to the Supplemental Loans for Students (SLS) and PLUS programs are also needed to protect the interests of students and taxpayers.

Our reviews of the SLS area found that the introduction of the SLS loan program to the proprietary school sector resulted in a tremendous increase in SLS loans and defaults and that this increase was due, to a large extent, to the fact that certain proprietary schools used SLS loans as an additional source of income with little regard to the student's increased loan burden. The provisions enacted in the Student Loan Reconciliation Amendments of 1989 restricting the SLS loan program only to schools with a cohort default rate of under 30 percent appear to have already shown results in addressing this problem. However, enacted as part of the budget legislation, these provisions may be temporary and could be affected by future budget legislation. Accordingly, we recommend that these or similar provisions be enacted in the HEA reauthorization.

Furthermore, we are of the opinion that proprietary schools should be required to disclose the basis for the tuition costs. We have found that tuition costs now being charged by certain proprietary schools are not a reflection of the schools' actual cost of instruction and operation, but merely a reflection of the maximum financial aid available. Accordingly, we urge that consideration be given to enactment of a provision that would require institutions applying to participate in student financial aid programs to disclose the basis for tuition charges.

In the PLUS program, we found that at one guarantee agency over 193 applications involving 118 individuals contained falsified information. In most of the cases the student did not exist. At an average of $3,500 in loans, the potential loss to the taxpayer is approximately $675,000. In a single case, one former financial aid officer at a major university fraudulently received $15,000 in PLUS funds by using false names and social security numbers. This could occur because PLUS proceeds are sent directly to the borrower rather than to the school. To stem such abuse of the PLUS program, we have recommended that the PLUS loan program regulations be revised to require that the PLUS loan checks be sent directly to the school listed on the loan application and separate notification of disbursement sent to the borrower, and that the checks be made co-payable to the borrower and school listed on the loan application.

We believe that the opportunity for unscrupulous individuals to illegally obtain PLUS loan proceeds at taxpayer's expense will be greatly reduced if these recommendations are implemented. To the extent that legislative authority does not exist in current law to allow these changes, such authority should be provided in the reauthorized HEA.

Institutional and National Data Base

ED's Institutional Data System (IDS) is the only comprehensive source of data regarding an institution's eligibility for and participation in the student aid programs. Our audit disclosed that it was so incomplete that its effectiveness as a management tool for monitoring was seriously impaired. Many vital fields pertaining to the school's basic eligibility qualifications were blank including licensing body and accrediting body information. ED is updating the system to enter missing data and to verify and improve the quality of existing data in the IDS.

Efforts by OIG and the General Accounting Office (GAO) have continued to demonstrate the need for a GSL national data base for borrowers to serve as a national clearing house for verification of student eligibility for a loan guarantee.

The major source of GSL information that the Department has available to it is the "tape dump" which is an extract or dump of selected information on each loan guarantee made by a guarantee agency as of September 30 of each year. The data collected in the tape dump is necessary so that ED has information, among other things, for program oversight; for program reviews at lenders, schools and guarantee agencies; and for analysis of borrowers for program planning and budgeting purposes. The data can provide statistical information by type of educational institution or type of lending institution on a national basis; annual default rates of schools; and identification of possible violations of loan limits by borrowers.

The Department provides the guarantee agencies with procedures describing how the guarantee agency must prepare its tape dump records, and how to submit them to ED. The guarantee agency is also required to certify the accuracy of the data. When ED receives the tapes from the guarantee agencies, it performs extensive validation procedures. Last year many guarantee agencies' information was not adequate and they had to resubmit their tape dumps. This caused quite a delay before the information could be used. In addition, there are indicators that cause us to question the accuracy of some of the data.

The need for a national data base to identify unqualified loan applicants has been documented as a major problem since at least 1981. The Office of Inspector General, GAO, and the Department have all identified the serious abuse by students receiving loan amounts in excess of the statutory maximums. In 1984, ED proposed rules to help alleviate the excessive loan problem and reduce program costs. The proposed rules further noted that the problem occurs because each guarantee agency maintains its own individual records and no national data base exists to monitor statutory annual and aggregate loan limits. They also noted that excessive indebtedness on the part of students also contributes to a high default rate which adds additional program costs to the Federal Government. This was at a time when the reinsurance default claims paid for the year was about $700 million, not the over $2 billion estimated for 1990.

ED was given the authority in 1986 to establish a National Student Loan Data System (NSLDS) which would establish and carry out a nationwide, computerized student loan data system, containing information regarding student loans that are made, insured, or guaranteed. However, by law the Secretary could not require guarantee agencies to use the NSLDS to determine borrower eligibility. The Omnibus Budget Reconciliation Act of 1989 finally removed this restriction.

We first recommended establishment of NSDLDS in 1984 and implementation of this system is still years away. In the meantime, ED will have to continue relying on a system that does not meet the GSL program needs.

We believe that improvement of ED's Institutional and National Data Bases is essential to providing meaningful, effective oversight of the Department's student aid programs. While we know of no specific legislative changes needed to enable needed improvements we urge continued attention to this area until improvement is accomplished.

Departmental Accounting System

Because of systems problems, the Department's statements of financial condition as a whole do not flow from and are not supported by its accounting system as required by the Comptroller General's accounting principles and standards. ED's Federal Managers' Financial Integrity Act (FMFIA) report to the President and Congress concluded that ED's system did not comply with the principles, standards and related requirements prescribed by the Comptroller General.

I believe there is increased awareness of the importance of financial management and there is increased involvement of ED senior management in this issue. The Deputy Secretary has established a Committee on Audit Follow-up and Internal Control. This committee meets weekly, is chaired by the Deputy Under Secretary for Management and includes high-level representatives from all Principal Offices. It is charged with coordinating the Department's compliance with the Federal Managers Financial Integrity Act (FMFIA). Also, my office has begun the process to audit the Department's financial statements as required by the Chief Financial Officer Act of 1990. Over time, these activities will aid in improving ED's accounting systems beyond their current condition.

Over the last several years, we have completed reviews of part of the Department's Primary Accounting System (PAS) and eight of its subsystems. Our audits have consistently shown weaknesses in internal controls within the program and subsidiary systems that "feed" financial data to the general ledger. We found that the Department lacks effective accountability and internal control over billions of dollars in appropriation fund balances. Account balances transferred to the Department at its inception were grossly inaccurate, and the Department has not reconciled the general ledger with the subsidiary accounts or external reports to Treasury since the Department was established in 1980. Managers are unable to rely on the general ledger or accounting subsystems to provide valuable information that they need for program oversight or monitoring. However, over the last three years, the Department has taken action to identify and attempt to correct problems with and errors in the general ledger. As part of this effort, the Department identified billions of dollars of recording errors and other deficiencies and has made adjustments to correct errors.

Our report in March 1988 on the collections subsystem disclosed some basic weaknesses. Borrower payments received on defaulted Federal Insured Student Loan accounts were deducted from the principal balance rather than applying payments first against accrued interest. As a result, the total amount of interest calculated for an estimated 248,000 accounts from their start date was understated by about $17.3 million. We have also found that accounts receivable are not always being recorded and reported accurately. In addition, the subsystems did not completely identify delinquent accounts because account aging was based on the most recent payment receipt dates without considering the amounts that were past due. As a result, about 9,000 accounts with outstanding balances totaling $21.1 million were improperly classified.

The Department's systems also do not provide accurate and reliable information on its potential liability for guaranteed student loans. The latest financial statements do not disclose, even in a footnote, the contingent liabilities that should be estimated on the over $50 billion of outstanding GSL loan guarantees. From our limited research in this area, we can ascertain only that the Department, for budgeting purposes, estimates those defaults that should be occurring in the current or projected budget periods. But these estimates of defaults are not disclosed in ED's financial statements. Since contingencies should be reported on financial statements depending on their probability of occurrence, it seems only logical that the Department should be reporting a contingent amount that can be reasonably estimated based on the loan guarantees made.

We are currently participating in an audit with GAO of the GSL program financial management system area. The ultimate objective of this audit is to render an opinion on the financial statements of the GSL program.

Secondary Market and Servicer Oversight

Over $110 billion in educational loan commitments have been made under the GSL program since its inception, and the outstanding GSL loan portfolio has grown to over $50 billion, with an unknown contingent liability for defaults associated with it. Despite the overwhelming presence of secondary markets in the loan programs (over 40 percent of the outstanding loans are owned by secondary markets) and loan servicers managing over 41 percent of the outstanding loan portfolios, our reviews disclose that there are no existing audit requirements or the existing audit requirements applicable to these entities do not provide the Department with the information needed to protect the integrity of SFA funds held by these entities. Our recent work in the secondary market and the servicer area disclosed that additional audit requirements are needed to improve the oversight of these student loan participants.

Secondary Markets. Secondary markets are allowed to purchase student loans from lenders to ensure that sufficient funds are available for the guaranteed student loan programs. Current Federal laws and regulations provide that State authorities using tax-exempt funding must have annual financial and compliance audits completed and sent to ED's Regional Inspectors General. However, our survey in this area disclosed that most authorities were not sending reports to ED; and the reports being sent, because of the way the current legislation is written, were not always financial and compliance audits which cover the administration of the guaranteed student loan program. Also, under current legislation, secondary markets using taxable or State financing are not required to submit financial and compliance audits to ED. Neither is the Student Loan Marketing Association (Sallie Mae), the largest secondary market with over 25 percent of the outstanding GSL portfolio.

Part of the problem, such as assuring that the reports are received and acceptable, can and should be addressed by the Department. Also, increased oversight will be afforded because, as recommended by GAO and OIG audit reports, the Department is in the process of regulating an audit requirement of the interest and special allowance billing for those "lenders" that have portfolios or make loans of over $10 million in a year. However, an audit requirement still needs to be legislated which would require annual audits of secondary market's administration of the guaranteed student loan programs.

The audits should be performed by a certified public accountant in accordance with Government Auditing Standards, issued by the Comptroller General of the United States, and an audit guide prepared by ED. This audit should be submitted to ED's Office of Inspector General, and oversight agencies, such as ED and guarantee agencies, should have access to the audit working papers.

Servicers. Greater oversight of the program could also be afforded by the inclusion of an audit requirement for servicers. Many SFA participants contract with servicers for all aspects of SFA functions, ranging from processing the SFA applications and cash management for a school, originating and collecting on the loans for a lender and even meeting the litigation requirements of a guarantee agency. With the exception of required biennial institutional audits which could review specific segments of servicer operations, ED currently does not regulate or systematically review servicer operations. Our review of servicers in the guaranteed student loan program disclosed that (1) servicers have significant control over the guaranteed student loan program portfolio, (2) a high degree of variability exists among servicers, and (3) a high percentage of servicers are affiliated with guarantee agencies and/or loan holders. We believe that ED is exposed to a high risk of financial loss because of the failure to monitor third party servicers.

Servicer audits could provide a minimum level of assurance that third party servicers are in compliance with SFA program regulations and a vehicle for early detection of servicer deficiencies. An audit requirement could permit the coordination of current audit and review efforts involving servicers. Servicers may also benefit from an audit requirement since a single, servicerwide audit would reduce the duplication of audit and review effort which they are currently experiencing. Due to the frequent changes in regulations and the technology used by servicers, an annual audit requirement is necessary to provide adequate assurance of compliance.

Specifically, we believe that the legislation should be changed to require that SFA participants that use servicers to conduct part of its SFA functions must use only servicers that have an annual audit that meets ED requirements. This audit should include a review of the internal control structure, and test compliance with SFA laws and regulations including compliance in those functions performed by the servicer on behalf of the SFA participant. These audits would be required if audit coverage of the servicer is not already required, or will be required, under A-128, A-110 or A-133. The audits should be performed by a certified public accountant in accordance with Government Auditing Standards, issued by the Comptroller General of the United States. This audit should be submitted to ED's Office of Inspector General, and oversight agencies, such as ED and guarantee agencies, should have access to the audit working papers.

Additional Change Needed

Schools should not be entitled to evidentiary hearings on audit and program determinations and limitation, suspension and termination actions by ED. The HEA currently entitles a school to a "hearing on the record" when ED makes a determination that the school should return Title IV funds based upon an audit finding or a program determination, 20 USC 1094. Similarly, schools are entitled to a "hearing on the record" when ED takes limitation, suspension and termination action. This means that ED must afford the schools in most cases full evidentiary, Administrative Procedures Act (APA) hearings. That is time consuming and resource intensive for ED. Further, the current requirement is all too often exploited by proprietary schools that can afford to mount costly legal challenges while the flow of Federal funds continues until the hearing on the record is concluded and a decision reached. OIG believes that all relevant issues can be fairly and more expeditiously addressed with written submissions and/or oral argument. Section 1094 should be amended to delete the "on the record" language.

In summary, Mr. Chairman, we would emphasize the need for legislative changes that will ensure that only quality institutions are permitted and continue to participate in Title IV programs; that increase oversight and accountability of guarantee agencies, secondary markets and third-party servicers; and that correct specific deficiencies outlined above. We are confident that, with the introduction of proper program controls, Federal student assistance programs can continue to provide postsecondary educational opportunity to millions of Americans without exposing students and taxpayers to the fraud, waste and abuse currently known too well to all of us.

Thank you, Mr. Chairman. I will be happy to respond, at this time, to any questions you or other members might have.

ATTACHMENT
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Legislative Recommendations Reauthorization of the Higher Education Act of 1965

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1. Accrediting agencies should be required to develop and consistently apply specific criteria for evaluating institutional quality.	8
2. Accrediting agencies should be required to immediately share with the ED any and all information in their possession regarding serious financial compliance or other problems that could effect a school's participation in Federal student financial assistance programs.	9
3. Statutory language authorizing the National Advisory Committee on Accreditation and Institutional Eligibility should be amended to prohibit committee members from engaging in committee activities that would result in conflicts of interest. Further, such language should require appointment of some members experienced in management and financial operations of postsecondary institutions.	9
4. Consideration should be given to legislating performance-based eligibility requirements for schools participating in Federal student financial assistance programs.	11
5. Consideration should be given to requiring States to establish and consistently apply adequate standards for determining the quality of institutions they license.	12
6. Unless adequate controls can be legislated to provide for effective control of foreign and correspondence schools, such institutions should be barred from participation in HEA Title IV programs.	13
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8. Institutional eligibility application requirements should be amended to ensure that school owners are held personally liable for the accuracy of information claim, and other statements on which eligibility is based. 13

9. Consideration should be given authorizing ED to approve course length or to requiring that course length be certified as appropriate by the State or by the accreditation agency as a condition of course eligibility. 14/19

10. Schools that use commissioned sales personnel should not be eligible for Title IV participation. 14

11. The HEA should be amended to provide ED with all authority necessary to prohibit weak or financially troubled institutions from Title IV program participation. 16

12. The HEA, at Section 490, should be amended to include as criminal conduct the attempt to commit those offenses identified in current law. 16

13. Consideration should be given to defining the term "independent" as it relates to third-party testing of SFA applicants who do not possess a high school diploma. 18

14. Consideration should be given to establishing a statutory equivalency between clock hours and credit hours or to reserve credit hour course measurement for degree-granting institutions. 20

15. Current provisions restricting the SLS loan program to low default schools should be continued. 21

16. Consideration should be given to requiring institutions applying for Title IV participation to disclose the basis for their tuition charges. 21

17. The Education Department should be granted adequate authority to require that PLUS loan checks be sent directly to the school listed on the loan application and be made co-payable to the borrower and the school. 22

18. The HEA should be amended to require annual audits of secondary markets and servicers participating in Title IV programs. 30

19. The current requirement for "on the record" hearings should be deleted from the HEA at section 1094. 33

Chairman FORD. Thank you. Mr. Thompson?

Mr. THOMPSON. Thank you, Mr. Chairman. I appreciate your invitation to be here today to share our views about ways to further improve one of our key student financial aid programs, the Stafford Student Loan program.

As you know, loan defaults have become an ever-increasing portion of the government's cost in operating the Stafford program. I depict this on this chart that we've just put up. Defaults have risen from about 10 percent of the total program costs in fiscal year 1980, to 44 percent in 1990. In comparison, interest subsidies have decreased to about 52 percent of the program's cost in 1990. In 1991, the lines may cross. Simply put, the cost of our failures is about to overtake the cost of the successes.

The loan default problem has not been ignored. The Congress and the department have implemented many changes during the past several years to address the default issue. In recent years, GAO has made numerous recommendations, and I'm pleased that many of them have been implemented already.

Nevertheless, further efforts are needed. In particular, in our view, the department needs to do a better job of approving and monitoring the schools that are allowed to participate in the program, and to assure that the data systems are created that will screen out ineligible students before they receive guaranteed loans.

Working together, the department and the Congress need to provide better incentives for lenders and guarantee agencies to assume part of the responsibility for preventing defaults and require guarantee agencies to maintain adequate reserves and avoid potential conflicts of interest to better ensure their financial stability.

Changes such as these could reduce access somewhat, in particular, to students enrolled in certain vocational and trade schools. On balance, we believe this risk is an acceptable price to pay for assuring the financial integrity of the student aid programs, but the Congress and the administration will have to be sensitive to minimizing any obvious adverse consequences as reforms are implemented.

Mr. Chairman, let me mention, just briefly, six key areas in which we believe improvements can be made. Those are summarized on my second chart [indicating] and many of them duplicate recommendations that have been made by the previous two witnesses, so I needn't dwell on them too long. They focus primarily on ways of strengthening the front end of the loan process by increasing default prevention efforts rather than improving post-default collection activities.

First, the department needs to establish better standards and guidelines for screening schools that want to begin to participate in student financial aid programs. Currently the department relies heavily on actions taken by State licensing agencies and private accrediting agencies. And unfortunately, experience shows that these organizations have their own goals and objectives and do not necessarily act in the government's interest.

The department must assume responsibility as the ultimate gatekeeper of Federal student aid programs. It needs to play a more active role in screening schools to reduce the exposure to financial risk to the government and to students. It should ensure that schools are financially sound and administratively capable of providing the education that they advertise. In addition, it should look at indicators such as student completion and placement rates.

To assist the department in playing a more active gatekeeper role, at the request of this committee, we are currently examining the standards or guidelines that could be developed and used to evaluate schools more closely.

Second, the department must develop its new student loan data system. This system will provide department officials part of the information they need to prevent student borrowers from abuses such as exceeding statutory loan limits and receiving additional loans when they are already in default.

Third, we believe that alternatives should be developed that would encourage more default prevention efforts by lenders. Such changes would encourage lenders to pay more attention to the kinds of schools their borrowers attend and the repayment practices of students.

The department has proposed two legislative changes in its fiscal year 1992 budget request that would require lenders to assume more accountability and risk for the loans they make. Briefly, these would require that lenders provide borrowers with graduated repayment options and reduce lenders special allowance payments by .25 percent if they have default rates of 20 percent or more.

We believe that these proposals have merit. We, ourselves, have proposed, previously, a third approach; that is that lenders receive less than a 100 percent guarantee on their loans so that they would share in the risk of their defaulted loans.

Fourth, the department must develop standards of conduct and requirements for separation of duties among guarantee agencies, lenders, and loan servicing organizations. These are needed to avoid potential losses from conflict of interests as well as to improve the credibility and integrity of the Stafford program. The department asks the Congress for the authority to issue such standards in its 1992 budget request. We encourage the Congress to give the department this authority.

Fifth, we need to change the incentives for guarantee agencies. Under current law, guarantee agencies have a financial incentive to allow delinquent borrowers to default. They typically receive 100 percent reinsurance for default claims paid to their lenders and can then retain up to 35 percent of funds subsequently collected from defaulted borrowers.

We believe that the provision allowing guarantee agencies to keep up to 35 percent of default collections should be repealed in order to remove this incentive. Instead, the collection responsibility would be shifted to the department which would allow the Federal Government to keep all of the proceeds, and it should enhance collections because the department possesses more collection tools than the agencies.

We believe the program should be restructured to provide it financial incentives that encourage more guarantee agency default prevention activities. Basically, agencies should be rewarded for keeping delinquent borrowers from defaulting rather than for letting them default and then collect.

Finally, we believe that the department should establish minimum reserve levels for guarantee agencies. No Federal requirements exist for financial reserve levels that guarantee agencies should maintain, potentially increasing Federal exposure to program losses. Failures to have such requirements undoubtedly contributed to the HEAF collapse.

And again, in the 1992 budget request, the department has proposed that Congress give it the authority to require certain minimum reserve levels for guarantee agencies, as well as allowing it to terminate its agreement with a guarantee agency if the reserve level is too low. We support this proposal.

Stafford Loans give eligible students access to low-cost loans to further their postsecondary education. They play a pivotal role in promoting opportunity, but they have been subject to abuse. Some of the weaknesses in the program are related to the Department of Education's administration, others can be traced to provisions of the Higher Education Act.

The administration is proposing a series of legislative changes that, if enacted, could address many of the program's shortcomings. We believe that our recommendations and suggestions, if adopted, will help the Congress and the department to correct many of the abuses and lead to a more efficient and effective delivery of loans to eligible students.

Mr. Chairman, that concludes the summary of my statement.

[The prepared statement of Lawrence H. Thompson follows:]

United States General Accounting Office

GAO

Testimony

For Release
on Delivery
Expected at
9:30 a.m. EDT
Wednesday
May 29, 1991

Vulnerabilities in the Stafford Student Loan Program

Statement of
Lawrence H. Thompson
Assistant Comptroller General
for Human Resources Programs

Before the
Subcommittee on Postsecondary Education
Committee on Education and Labor
House of Representatives

Mr. Chairman and Members of the Subcommittee:

I am here today to share our views about some ways to further improve student financial aid programs administered by the Department of Education. These programs are extremely important to students seeking a postsecondary education and to the future workforce of our nation. In recent years these programs have been the subject of great scrutiny--much of it focused on student-borrowers who have defaulted in the Stafford Student Loan Program.

STAFFORD PROGRAM PERSPECTIVE

As you know, loan default costs have been growing--from $1.3 billion in 1986 to $2.5 billion in 1990--and have become an ever increasing portion of the government's cost in operating the Stafford program.

Defaults have risen from about 10 percent of total program costs in fiscal year 1980, to 44 percent in 1990.[1] In comparison, interest subsidies have decreased to about 52 percent of the program's costs in 1990.[2]

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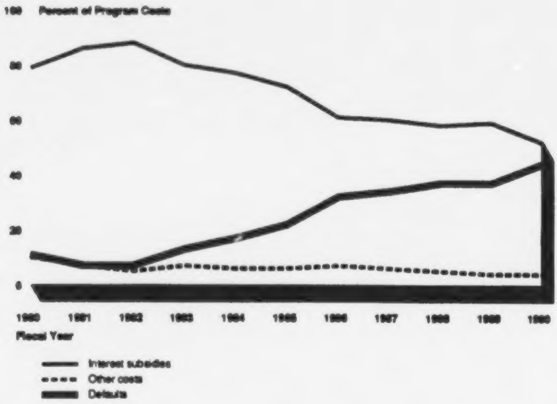
[1] The default costs represent reinsurance paid to guaranty agencies.

[2] In part, the declining interest subsidy stems from declining Treasury bill rates used to compute the size of the subsidy.

Figure 1: Defaults As a Percentage of Program Costs



CONGRESSIONAL, DEPARTMENTAL, AND GAO EFFORTS ADDRESSING LOAN DEFAULTS

The loan default problem has not been ignored. The Congress and the Department have implemented many changes during the past several years to address the default issue. For example, the Congress enacted 18 pieces of legislation since 1980 that had one or more provisions related to student loan defaults or default collections, and most of this legislation has occurred since the last reauthorization.

The Department has also taken several steps designed to improve the integrity of the Stafford program. For example, in its fiscal year 1992 budget request, the Department proposed over 30 legislative changes to the program. These proposals include default prevention, default collections, and risk-sharing measures.

In early 1991, the Department and the Office of Management and Budget completed a joint study of the Department's Office of Postsecondary Education. The resulting report found that the Department's management practices contribute to high loan default rates and, more generally, to fraud and abuse in student aid programs. The report contains many recommendations that, if implemented, would result in a major restructuring of the office to better administer and oversee student financial aid programs.

The Comptroller General has identified the guaranteed student loan programs as 1 of 16 federal programs where internal and management control breakdowns are placing the federal government at risk. GAO has issued over 30 reports on higher education topics since the last reauthorization of the Higher Education Act in 1986, and most of these products have concentrated on student loans.[3] We have made numerous recommendations to the Congress and the Department for improvements, and are pleased that many of them have been implemented.

MORE IMPROVEMENTS NEEDED TO CORRECT VULNERABILITIES IN THE STAFFORD PROGRAM

We support efforts by the Congress and Department to address many of the problems that have been identified. We also support many of the Department's current legislative and programmatic proposals which should strengthen the financial management of, as well as restore confidence in, federal student aid programs.

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[3] A list of these products is attached.

However, we believe further efforts are needed. To better ensure that eligible students are completing their school experience and repaying their student loans, additional changes must be made to the structure and administration of the Stafford program. In particular, the Department needs to:

-- do a better job of approving and monitoring the schools that are allowed to participate in the programs, and

-- assure that data systems are created that will screen out ineligible students before they receive guaranteed loans.

And working together, the Department and the Congress need to:

-- provide better incentives for lenders and guaranty agencies to assume part of the responsibilities for preventing defaults, and

-- require guaranty agencies to maintain adequate reserves and avoid potential conflicts of interest to better ensure their financial stability.

Changes such as these could reduce access somewhat, in particular to students enrolling in certain vocational and trade schools. On balance, we believe this risk is an acceptable price to pay for assuring the financial integrity of the student aid programs. But the Congress and the administration will have to be sensitive to minimizing any obvious adverse consequences as reforms are implemented.

I would like to discuss six key areas which relate to these potential changes for further improving program integrity. These areas are shown in figure 2. They focus primarily on developing ways to strengthen the front end of the loan process by increasing default prevention efforts, rather than improving post default activities.

Figure 2: Areas for Further Improving Program Integrity

- Approving schools
- Reducing borrower abuse
- Increasing lenders' risk
- Preventing conflicts of interest
- Focusing on default prevention
- Setting reserve requirements

Procedures for Determining School Eligibility Put the Government and Students at Risk

The Department should establish better standards and guidelines for screening schools that want to participate in student financial aid programs. These criteria could consist of outcome measurements such as student completion and placement rates. The Department also needs to establish a better system for monitoring schools that currently participate.

Many student-borrowers have attended schools that have not provided them with a quality education; some seem to exist primarily to take advantage of the "cash cow" provided by the government. Students attending such schools suffer at least two consequences: (1) they receive little or no training, and (2) they incur student loan debt they cannot repay because they lack the skills needed to become gainfully employed. Such schools also expose students and the federal government unnecessarily to risk of financial loss.

The Department's process for approving schools is not effective in identifying these schools. The process relies heavily on actions taken by organizations such as state licensing agencies and private

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accrediting agencies. Unfortunately, experience shows that these organizations have their own goals and objectives, and do not necessarily act in the government's interest.

The Department, however, is the ultimate gatekeeper of federal student aid programs. As such, it needs to play a more active role in screening schools to reduce the exposure to financial risk to the government and students. In approving schools initially and monitoring schools currently participating, it should ensure that schools are financially sound and administratively capable of providing the education that they advertise. To assist the Department in playing a more active gatekeeper role, we are currently examining the standards or guidelines that could be developed and used by the Department to evaluate schools more closely.

Department's Loan Data Base Not Fully Used In Preventing Borrowers' Abuses

The Department should expedite the development of its new student loan data system to more effectively protect the integrity of the Stafford program. This system is crucial in providing departmental officials part of the information they need to prevent student-borrowers from abuses such as (1) exceeding statutory loan limits and (2) receiving additional loans when they are already in default.

The Department's current student loan data base has not been effective in providing information which could be used to prevent student borrowers from abusing the loan program. Abuses have occurred, in part, because the data base was not designed to help guaranty agencies and their lenders verify borrower eligibility.

In 1986, the Congress provided the Department the authority to develop the National Student Loan Data System. Such a system could be used to assist lenders and guaranty agencies in guarding against borrower abuse. However, until 1989 the Congress prohibited the use of this system to verify borrower eligibility before loan approval.

The administration was reluctant to fund the design of the new system until the restriction was lifted. The Department now plans to complete development of the system in late 1993. We hope the Department meets its deadline.

Lenders Have Little Incentive to Prevent Defaults

Alternatives should be developed that would encourage more default prevention efforts by lenders. Such changes would encourage lenders to pay more attention to the kinds of schools their borrowers attend and the repayment practices of students.

Lenders generally incur very little financial risk for borrowers who default on their loans as long as lenders adhere to the Department's collection procedures. These procedures--called "due diligence"--set specific time frames for lenders to initiate telephone calls and send letters to students who are delinquent on their loans.

The collection requirements, in many cases, can be a pro forma process because the telephone calls and letters may be easily recorded by computer software. When a lender submits its default claim documenting that due diligence was performed, it receives 100 percent of the principal amount and accrued interest on the loan. Therefore, lenders are subject to very little risk in making student loans.

The Department has proposed two legislative changes in its fiscal year 1992 budget request that would require lenders to assume more accountability and risk for the loans they make. These proposals would

-- Require that lenders provide borrowers with graduated repayment options. This would permit borrowers, for example, to pay only interest during their first 4 years of loan repayment and defer loan principal repayments during that period.

-- Reduce lenders' special allowance (interest subsidy) payments by 0.25 percent if they have default rates of 20 percent or more during a fiscal year.

We believe that the Department's proposal has merit, and parallels our previously reported concerns that lenders have little to lose when their guaranteed loans default. The Department's proposals are directed toward getting more accountability for lenders with high default rates. Our previous suggestion, although different from the Department's, would have lenders receiving less than a 100 percent guarantee on their loans so that they would share in the risk of their defaulted loans.

Guaranteed Student Loan Operations Subject to Conflict of Interests

The Department should develop standards of conduct and requirements for separation of duties among guaranty agencies, lenders, and loan servicing organizations. These are needed to avoid potential losses from conflict of interests, as well as to improve the credibility and integrity of the Stafford program. The Department asked the Congress for the authority to issue such standards in its 1992 budget request. We encourage the Congress to give the Department this authority.

Guaranty agencies' activities and their relationships with lenders and loan servicers have resulted in less than arms length transactions, raising various questions about possible conflict of interest. Guaranty agencies perform a major function as the middleman in the Stafford program. They are supposed to ensure that lenders have properly pursued loans for collection before they file default claims.

However, some guaranty agencies also operate their own loan servicing operations. In such arrangements, the agencies can be in the position of being both the guarantor and lender for the same loan. Should such a loan go into default, the agencies must determine whether the correct loan collection procedures were followed. Quite obviously, in these instances, the agencies have a conflict of interests, since they are evaluating their own loan servicing activities. Therefore, we believe that guaranty agencies should be prevented from servicing loans that they guarantee to avoid possible unnecessary risks with apparent conflict of interests.

Guaranty Agencies Lack Incentives to Prevent Defaults

Under current law, guaranty agencies have a financial incentive to allow delinquent borrowers to default. They typically receive 100 percent reinsurance for default claims paid to their lenders, and can then retain up to 35 percent of funds subsequently collected from defaulted borrowers. We believe that the provision allowing guaranty agencies to keep up to 35 percent of default collections should be repealed in order to remove this incentive.

Instead the collection responsibility would be shifted to the Department. The shift will allow the federal government to keep all of the proceeds. Also, it should enhance collections because the Department possesses more collection tools than the agencies in trying to convince borrowers to repay, such as IRS income tax refund offsets and federal employee wage garnishments.

In addition, the program should be restructured to provide financial incentives that encourage more guaranty agency default prevention activities. Although guaranty agencies incur some costs when defaults reach certain thresholds, they are financially rewarded primarily after delinquent loans default and defaulted borrowers subsequently make payments on their loans. Instead agencies should be rewarded more for keeping delinquent borrowers from defaulting. Albeit the agencies' have a primary function of assisting lenders in preventing defaults--agencies have several chances at default prevention--they are given little reward if they are successful.

No Requirements for Guaranty Agencies to Maintain Reserve Levels

The Department should establish minimum reserve levels for guaranty agencies. Under present statutory requirements, the Department is not liable for paying lenders' claims on defaulted loans when guaranty agencies become insolvent. However, the statute authorizes the Department to take various legal actions, including the payment of claims. The Department has insured the payment of lenders' claims in the one instance when a guaranty agency did fail--the Higher Education Assistance Foundation (HEAF) which failed in 1990. The Department may incur more than the $30 million in costs as a result of the agreements reached to resolve the failure of HEAF. As a practical matter, this is likely to happen again if other agencies get into financial trouble.

No federal requirements exist for financial reserve levels that guaranty agencies should maintain, potentially increasing federal exposure to program losses. Failure to have such requirements contributed to the HEAF's collapse. In its 1992 budget request, the Department has proposed that the Congress give it the authority to require certain minimum reserve levels for guaranty agencies, as well as allowing it to terminate its agreement with a guaranty agency if the reserve level is too low. We support this proposal.

CONCLUSIONS

Stafford loans give eligible students access to low-cost loans to further their postsecondary education. The Department of Education is responsible for administrating the program to ensure congressional objectives are being attained as well as protecting the federal government from any undue financial risks or vulnerabilities. As such, the Department must ensure that (1) participating schools provide an education that leads to gainful employment, (2) only eligible students be given federal aid, and (3) the lenders and guaranty agencies share more in the risks associated with the program.

Many of the vulnerabilities in the federal student aid programs, including those we discussed today, put the government at risk. Some of these weaknesses are related to the Department of Education's administration of the programs, others can be traced to provisions of the Higher Education Act. The administration is proposing a series of legislative changes that, if enacted, should address many of the program's shortcomings.

We believe that our recommendations and suggestions will provide the Congress and the Department the impetus for correcting many of the deficiencies in the Stafford program, and lead to more efficient and effective delivery of loans to eligible students.

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Mr. Chairman, that concludes my statement. I would be happy to answer any questions that you or the other Subcommittee Members may have.

SELECTED GAO REPORTS ON HIGHER EDUCATION ISSUES (SINCE 1986)

Student Loans: Characteristics of Defaulted Borrowers in the Stafford Student Loan Program (GAO/HRD-91-82BR, Apr. 26, 1991).

Perkins Student Loans: Need for Better Controls Over Loans Recovered From Closed Schools (GAO/HRD-91-70, Mar. 27, 1991).

Stafford Student Loans: Millions of Dollars in Loans Awarded to Ineligible Borrowers (GAO/IMTEC-91-7, Dec. 12, 1990).

Credit Management: Widespread Loan Origination Problems Reported (GAO/AFMD-91-7, Nov. 9, 1990).

Guaranteed Student Loans: Profits of Secondary Market Lenders Vary Widely (GAO/HRD-90-130BR, Sept. 28, 1990).

Student Loan Lenders: Information on the Activities of the First Independent Trust Company (GAO/HRD-90-183FS, Sept. 25, 1990).

School Accreditation: Activities of Seven Agencies That Accredit Proprietary Schools (GAO/HRD-90-179BR, Sept. 12, 1990).

Defaulted Student Loans: Analysis of Defaulted Borrowers at Schools Accredited by Seven Agencies (GAO/HRD-90-178FS, Sept. 12, 1990).

Government-Sponsored Enterprises: The Government's Exposure to Risk (GAO/GGD-90-97, Aug. 15, 1990).

Supplemental Student Loans: Legislative Changes Have Sharply Reduced Loan Volume (GAO/HRD-90-149FS, Aug. 3, 1990).

Higher Education: Gaps in Parents' and Students' Knowledge of School Costs and Federal Aid (GAO/PEMD-90-20BR, July 31, 1990).

Promising Practice: Private Programs Guaranteeing Student Aid for Higher Education (GAO/PEMD-90-16, June 22, 1990).

Consolidated Student Loans: Borrowers Benefit but Costs to Them and the Government Grow (GAO/HRD-90-8, June 15, 1990).

Credit Management: Deteriorating Credit Picture Emphasizes Importance of OMB's Nine-Point Program (GAO//AFMD-90-12, Apr. 16, 1990).

Guaranteed Student Loans: Credit Bureau Reporting Practices by Guaranty Agencies and Lenders (GAO/HRD-90-71BR, Apr. 9, 1990).

Pell Grants: How the Department of Education Estimates Program Costs (GAO/HRD-90-73BR, Feb. 21, 1990).

Supplemental Student Loans: Who Are the Largest Lenders? (GAO/HRD-90-72FS, Feb. 21, 1990).

Financial Integrity Act: Inadequate Controls Result in Ineffective Federal Programs and Billions in Losses (GAO/AFMD-90-10, Nov. 28, 1989.

Supplemental Student Loans: Who Borrows and Who Defaults (GAO/HRD-90-33FS, Oct. 17, 1989).

Student Athletes: Most Schools Meet Proposed Academic Performance Reporting Requirements (GAO/HRD-89-157BR, Sept. 11, 1989).

Guaranteed Student Loans: Comparisons of Single State and Multistate Guaranty Agencies (GAO/HRD-89-92, July 11, 1989).

Guaranteed Student Loans: Analysis of Student Default Rates at 7,800 Postsecondary Schools (GAO/HRD-89-63BR, July 5, 1989).

Student Athletes: Information on Their Academic Performance (GAO/HRD-89-107FS, May 17, 1989).

Education Issues (GAO/OCG-89-18TR, Nov. 1988).

Defaulted Student Loans: Preliminary Analysis of Student Loan Borrowers and Defaulters (GAO/HRD-88-112BR, June 14, 1988).

Pell Grants: Who Receives Them and What Would Larger Grants Cost (GAO/HRD-88-106BR, June 14, 1988).

Guaranteed Student Loans: Potential Default and Cost Reduction Options (GAO/HRD-88-52BR, Jan. 7, 1988).

Guaranteed Student Loans: Analysis of Insurance Premiums Charged by Guaranty Agencies (GAO/HRD-88-16BR, Oct. 7, 1987).

Guaranteed Student Loans: Legislative and Regulatory Changes Needed to Reduce Default Costs (GAO/HRD-87-76, Sept. 30, 1987).

Defaulted Student Loans: Private Lender Collection Efforts Often Inadequate (GAO/HRD-87-48, Aug. 20, 1987).

Student Aid: Financial Assistance to Scholarship Athletes (GAO/HRD-87-78BR, May 11, 1987).

Financing Higher Education: Examples Comparing Existing and Proposed Student Aid Programs (GAO/HRD-87-88FS, April 22, 1987).

Defaulted Student Loans: Guaranty Agencies' Collection Practices and Procedures (GAO/HRD-86-114BR, July 17, 1986).

Chairman **Ford**. Thank you very much. This panel has raised more questions than any we've had yet. That leaves me wondering exactly what you are saying. The three of you make the same kind of noises with the same kind of language, but they're not coming through as being tuned, not playing from the same sheet of music. The one thing we do lack here is specifics.

I think we'll start with you, Mr. Sanders. If the other gentlemen want to chip in to agree or disagree or help, then that will be fine.

Mr. Sanders, in this general recommendation, which was concurred by at least one of the other gentlemen, that the States share in the role of guarantee agency, that has a kernel of familiarity to us and has had some appeal. We've never been able to quite figure out how to get it done.

Your language says, "We would also require States with school default rates that exceed 20 percent to pay a share of the default costs." Do you mean a cumulative total of 20 percent of all the student loans in that State, or do you do it by institution?

Mr. **Sanders**. No, it would be cumulative total for the entire State, as I understand it, Mr. Chairman.

Chairman **Ford**. How many States now have a cumulative total default rate in excess of 20 percent?

Mr. **Sanders**. I don't know the answer to that, but I suspect someone here on staff does.

Six, Mr. Chairman.

Chairman **Ford**. Only six? Then it would seem that 20 percent is a fairly mild cutoff point, wouldn't it—if we're going to do something drastic and we only hit six States with it. What are the six States; do you have them?

Mr. **Sanders**. Yes, Mr. Chairman.

Chairman **Ford**. I'm not volunteering my State, but I'm wondering how you come up with a standard that only hits six States after using strong language to describe the seriousness of this problem.

Mr. **Sanders**. Just a moment, and we'll have the six States for you.

Chairman **Ford**. Well, let's go on to the second part of that paragraph. "We also are proposing to reduce special allowance payments by .25 percent to lenders with default rates exceeding 20 percent." Can we expect that when your legislation comes up, that it's going to include language to do this?

Mr. **Sanders**. Yes, it will, Mr. Chairman.

Chairman **Ford**. And will that be accompanied by some indication to us of what the impact on these weak States—I'm assuming the word weak is appropriate—if there are only six in that status in the whole country? How much more shock can their system take before we shut them down?

If you can't answer that now, I'm not surprised, but I think when we get to legislation, we would want to know that.

Mr. **Sanders**. I would be happy to give you that additional analysis, Mr. Chairman. Of course, this would affect lenders in even other than the six States.

Chairman **Ford**. God forbid that one of the States—let's hope that none of the States that you've got on your hit list include the chairman of the Appropriations Committees on either side of the Capitol. I'm sure you're as sensitive to that as we are.

While you're getting the six States—do you have them yet?

Mr. **Sanders**. Not yet.

Chairman **Ford**. While they're getting them, let's go to the next one. On page 6, you say, "Through enhanced reviews of initial program eligibility and improvements in the process for terminating participation in the GSL program, we can ensure that schools that are designed for the purpose of bilking the U.S. government and the taxpayer will be eliminated from our student aid programs." What does a school designed to bilk the taxpayers look like?

Mr. **Sanders**. Mr. Chairman, it would be a school who's primary interest is in receiving the Federal financial aid and not in providing any educational or adding any kind of educational value to the student. It would be designed specifically for participation in the program and not to provide any benefits to the students.

Chairman **Ford**. I doubt, Ted, that you would find anybody in this country, even the most radical to the right or to the left, that would disagree with that proposition, but I don't know how we describe one of those kind of schools in legislative language.

Mr. **Sanders**. I don't know how we describe them, necessarily, in legislative language, but I think we can draw a good bit on the work that the inspector general has done with many of the schools that have been problems in this area. Look specifically at their characteristics, Mr. Chairman

Chairman **Ford**. Well, the inspector general looked at 12 schools in the proprietary area, out of some 5,000; that's not a very big sample. Intuitively, I suppose, I could pick 12 schools that are going to give you very good results and 12 schools that aren't going to give you very good results, but we're going to need something more to write a definition that's going to hold up for five minutes in the court. We just can't intuitively decide what is and what is not a good school.

Mr. **Sanders**. I think, Mr. Chairman, that we could look to the participation rates, completion rates, and placement rates as, maybe, one way of getting some insight and some help in that particular area. It is——

Chairman **Ford**. Would you suggest that we do that also with community colleges?

Mr. **Sanders**. I would assume, Mr. Chairman, if we're going to apply these standards, we would apply them generally, not specifically to any specific set of institutions.

Chairman **Ford**. To all postsecondary education.

Mr. **Sanders**. Yes.

Chairman **Ford**. Mr. Thomas, on page 3 of your statement you say, "Of these 10 proprietary schools, OIG reviews have uncovered regulatory violations at 6 of them." What have you done about that?

Mr. **Thomas**. I'm sorry, I didn't hear the last part of the question, sir.

Chairman **Ford**. You said that you found regulatory violations at 6 of the 10 schools examined. What have you done about that? You're the inspector general.

Mr. **Thomas**. Yes, sir. What we've done, Mr. Chairman, as part of the audits and our investigations and our inspections of these institutions—of the top five proprietary schools, the largest ones that received financial assistance, four of them, sometime during or shortly after the audit or investigation was done, ceased to get student aid at all. Some of those went out of the student aid business of their own volition, based upon problems that we found. And others went out when the department took action on them.

Chairman **Ford**. All right. You go on to say, "Our OIG investigation have uncovered evidence of criminal activity." What did you do about that?

Mr. **Thomas**. We are in the process or have already prosecuted many of them.

Chairman **Ford**. Could you give us some detail on what kind of criminal offenses were being committed and what the Justice Department has done, if anything, about them?

Mr. **Thomas**. Yes, sir. We would be happy to provide a whole litany of that——

Chairman **Ford**. We don't want, in any way, to prejudice the Justice Department's prosecution of any criminals, but we would like to know what does that mean, what kind of criminal activity are we talking about.

Someplace later—isn't it your statement—when you talked about somebody at a university cheating on the PLUS loan money, putting it in their own pocket by using phony identification?

Mr. **Thomas**. Yes, sir. That's in my statement also.

Chairman **Ford**. That wasn't a proprietary school, that was a university.

Mr. **Thomas**. As I recall, it was.

Chairman **Ford**. Was it a public or a private university; can you remember?

Mr. **Thomas**. No, sir. I don't remember the specifics. I'll be happy to get it for the record.

Chairman **Ford**. Well, one final question and then I will have to give up my time for the other members here. I noted that one of you came down hard with language saying, "These schools," and it was during a discussion of proprietary schools, "are corporations." The word "corporation" took on a kind of life that indicated that—like people in my district believe, a corporation is presumptively bad. There was a time when I thought that, until I became a lawyer and started forming them for people. When I wrote bylaws, they were good.

All the private colleges are corporations, are they not? Do you know of any that are not?

Mr. **Thomas**. I don't know about all of them or even any of them, but I would assure that many are, yes.

Chairman **Ford**. Well, when you throw the word around that there's something inherently suspect about being a corporation, you've got to recognize that Harvard's the oldest one in the business. And they aren't going to take too kindly to the idea that their corporate status is something to be looked at.

What, beyond the fact that they're corporations, were you getting at? You said that no one is personally liable for the mishandling of student aid because they're corporations.

Mr. **Thomas**. One of the things that we found, Mr. Chairman, in many of the schools that we had done audits or investigations on where we have found, for example, unpaid refunds back to lenders for students who have either not completed their school, dropped out, or some other reason, or the school went out of business, is that the corporate structure is just a shell with no resources at all from which to make those payments back. And therefore——

Chairman **Ford**. But the way you made your statement, you pointed out, quite accurately, that in the status of a corporation, the individual owners of that corporation are not individually liable for things unless by statute.

We make them liable. In the Internal Revenue Code, we make the individual officers of a corporation responsible notwithstanding the status of the corporation for failure to withhold income tax, for example, on employees. That becomes a personal liability that corporate status doesn't protect you from.

So it is possible to reach that personal liability. And is it your suggestion or is it implied here that we should be considering a way to make the officers of a corporation personally liable for the conduct of their agents in handling Federal money, as we do with the Internal Revenue Code?

Mr. **Thomas**. That is our proposal, yes, sir.

Chairman **Ford**. And would that extend to all corporations in the education business?

Mr. **Thomas**. Yes, sir. I don't see any reason why it would not.

Chairman **Ford**. You see, there are profit-making corporations and nonprofit corporations, and sometimes we get confused. You just described a corporation that's a nonprofit corporation because it's broke. But we talk about a nonprofit corporation as a 501-C3 tax exempt operation; it is not designed to make a profit.

All the profit-making corporations—and the best example is the Big Three automakers who are turning in record losses now, with all of their genius, now at about $2 billion for the first quarter of this year. They're not nonprofit corporations even though they are nonprofit at the moment.

And so what I want to know from you is if you feel that this corporate veil ought to be pierced wherever we have a corporate status that insulates the responsible managers of that business from answering to the department.

Mr. **Thomas**. The point that we were trying to make, Mr. Chairman, is that we have found, in the cases that we've been involved in, many instances where the individual owners have taken a lot of money of the institutions'—and these are for-profit proprietary schools that we have had the opportunity of looking at, particularly.

Chairman **Ford**. Maybe they learned something from the savings and loan people. We've discovered hundreds of billions of dollars of that kind of conduct in the savings and loan industry, and now it appears that some of it's showing up in banks. The question people now ask is: "How did that happen?"

While I'm not on a banking committee and thank God for that—I discuss it with my friends. I ask, "How would you anticipate this kind of freebooting going on in institutions that used to have conservative management? How would you anticipate, as an executive of a savings and loan, people borrowing a very large amount of money to take a flyer in the real estate market and what appeared to be a hot market, which was really falling apart, and then not being able to pay the money back?"

These things went on all over. Right now, the administration and the banking committees in both Houses are trying to figure out how to keep this from happening again.

You're asking this committee to go into an area that gets us all tangled up. I believe it was Mr. Sanders' testimony, that stated, "One of the problems I have at the department is that they don't have enough number-crunchers over there," people whose specialty is finance and financial institutions.

We don't have number-crunchers, either; we have program people. And if we're going to do something like that, I would suggest to all three of you that we need more help than just a generalized identification of a problem. If it's a problem as you perceive it, then we need some basis to establish that it's a problem that's broke and it needs fixed. And then we need your help to tell us how to fix it.

Thank you very much.

Mr. **Thomas**. We'll be happy to work with you, Mr. Chairman, on doing that.

Chairman **Ford**. Mr. Coleman?

Mr. **Coleman**. You have given us so much information this morning that it's hard to formulate a series of questions to specifically get at a lot of the concerns that we have. And I would ask that you make yourself available to members, or at least, certainly, to the Chairman and myself, and others who might want to join in a sort of ad hoc meetings, after this hearing, if we run out of time.

First of all, Mr. Thomas, you have a whole host of recommendations, investigations, and so forth, and some of them I want to go through. And I agree with you that accreditation is the main issue in this reauthorization. If we don't have a strong accreditation process, we allow fly-by-nights, we allow institutions who do not provide quality education, we basically open up the process for anybody that wants to, to take advantage of it. If we don't have a good accreditation policy. I assume you conclude and agree with that statement.

Mr. **Thomas**. Yes, sir.

Mr. **Coleman**. In formulating a new accreditation policy, we get into this sticky wicket of how far the Federal Government should go in the determination of academic freedoms and the desire for accountability. And, Mr. Sanders, this is where talking about things is one thing, getting specific is another. And that's what we need, specificity. And I hope that you will be able to work with specific language so that we will be able to carry out these recommendations being made—which I think you support—in time to incorporate them and have a good look at them so we are sure that we're doing the right thing.

But I'm a little concerned that perhaps this problem has been going on for a number of years and hasn't been adequately addressed. And I wonder if it couldn't be addressed administratively. Your first recommendation, Mr. Thomas, is very telling.

And it simply states that, "Accrediting agencies should be required to develop and consistently apply specific criteria for evaluating institutional quality." Well, excuse me, I thought that's what accreditation was all about. And you're telling me we don't have that now?

Mr. THOMAS. That's my understanding, Mr. Coleman.

Mr. COLEMAN. Is that your conclusion?

Mr. THOMAS. Yes, sir. This recommendation is based upon the work that we have done and the indications that we have from our analysis.

Mr. COLEMAN. Mr. Sanders, do you have a different view of the accreditation standards that the department has currently?

Mr. SANDERS. Well, a somewhat different view, Mr. Coleman. I mean, I don't think I would paint with the same brush all the crediting bodies and their focus and the quality with which they carry out their standards in assuring quality. But yes, there are problems in a uniform, high level of performance of accrediting bodies, and yes, there are things that we can do administratively that would improve as we exercise our oversight through the Secretary's recognition process. And we are doing those things administratively at the moment.

Yes, there are things that we ought to be looking at and thinking about, potentially, from a legislative point of view. We have only the two processes upon which we must rely: either the accrediting bodies and their stamp of approval, or the State licensing process which is equally mixed. There are not uniform levels of quality in that process, and we have no oversight over the State licensing process. We must accept that. That's one of the reasons that we come to you with proposals that would bring some incentive for improved State performance.

Mr. COLEMAN. I understand that, but I'm getting back to what the department, for a number of years—and I know it may not have been under your watch or, certainly, the current Secretary's watch—but, in fact, we've had problems through the years. And it seems to me that you could have identified those problems and created the regulatory framework so that you don't have to simply buy an accreditation agency's standards; they may come up with them this week. And if they approve an institution, you have to certify them as a proper institution.

Well, it seems to me that there's been a lot of standing around and waiting on this, and I'm not sure it needed legislation—I think we're trying to close those gaps, but I would hope that it could be done administratively in any event. This bill is not going to become a law next week; you could be a whole year, at least, before there is something for the President to sign.

In the meantime, there are literally thousands of students, millions of dollars going out the window, that you could tighten up in this accreditation process. And I hope you do, and don't say, "Well, Congress hasn't done it yet." Because Congress is going to do something, but I'd like to see you do something quickly during in the process.

Mr. SANDERS. Mr. Chairman, if I might, again, respond. I would be happy to give you a more lengthy and detailed response, but we have sent decisions back to the Secretary's Recognition Advisory Committee for them to take a closer look at what it is that they have done. We've asked them to take specific steps in looking at accrediting agencies that seem to have a disproportionate share of schools that they have accredited with high default rates.

We've brought those accrediting bodies in, specifically, to talk about how we can jointly take steps that would improve even their work in accrediting schools. In the final analysis, though, we must take—once we have recognized those bodies against the standards for recognition promulgated by the Secretary—we must accept their recommendation of institutions. We cannot quibble about quality at that point with them. They either do or do not have that accreditation.

Mr. **Coleman**. Well, let me ask you, one of abuses we've seen is branching, where an institution will open up a branch somewhere. Do they need certification to do that, the branch?

Mr. **Sanders**. Yes, they do. And we've tightened things there too. Moving to require a 2 year period before they can become eligible for student aid as a stand-alone. Yes, there has been a major problem with branching activity, and we've taken a number of steps to try to address those problems.

Mr. **Coleman**. One of the recommendations, again, by the inspector general, is to amend that Act so that it prohibits weak and financially troubled institutions from participating in Title IV programs. Again, we get into that area of "weak" in what way? Weak in quality? And how do you gage that? Weak in personnel? Weak on that balance sheet if it's a for-profit? Mr. Thomas, do you want to amplify?

Mr. **Thomas**. Yes, sir. There are two basic areas, Mr. Coleman, that the department makes a judgement on. One is their financial capacity to carry out, administer the program. And one is their administrative capability to carry out the program. And what we're saying is that those are the only two judgments that the department makes in order to provide eligibility for an institution.

Mr. **Coleman**. Are we talking, now, about profit and not-for-profit as well?

Mr. **Thomas**. That's my understanding.

Mr. **Coleman**. All right.

Mr. **Thomas**. And so those are the judgments that are made. And what we're suggesting is that if the department has specific criteria that must be met, and that either a school meets it or it doesn't meet it. And what we found in our review there was that the department was letting into the program any schools that were marginal in nature. And many of those schools went out of business within the first 1 or 2 years leaving a lot of students high and dry, and therefore leaving a lot of unpaid debts and broken dreams and things of that kind.

Mr. **Coleman**. All right. Let me ask you, Mr. Sanders, we heard testimony last week from students and people who represented students in law suits involving a school that shuts down. The students had already taken out their loans and due to no fault of their own, had chosen the wrong school to go to. Apparently, the department doesn't really care what their experiences were, they consider them and go after them like anybody else, even though they may not have had 2 days of education.

Do you have any flexibility to determine whether or not a student was caught in such a web? And to go after them seems somewhat unfair since they had no warning of the poor experience presented to them.

Mr. **Sanders**. To my knowledge, Mr. Coleman, we do not have latitude to treat students caught in that kind of situation different from other students who have defaulted on their loans. We do have other provisions requiring teaching or try to assure that, indeed, what they get is of value and is indeed delivered to them. But on the side after such a situation has developed, to relieve them of their responsibility having taken out the loan, no, we do not have.

Mr. **Coleman**. And are you recommending, Mr. Thomas, that there be a bonding authority; is that what you're recommending?

Mr. **Thomas**. Yes, sir. Could I add to the answer that Ted Sanders mentioned?

The only exception that I know to what Deputy Secretary Sanders said is in those cases where it's clearly shown that fraud was committed, that the student did not know about and was not a participant in, then it's my understanding that the department can relieve that student of that liability.

Mr. **Coleman**. Are they?

Mr. **Thomas**. It's my understanding that they are. This is not a very widespread thing, of course, because you have to prove specific fraud that exists there, that the student was not a party to and yet the student wound up owing money.

Mr. **Coleman**. I know there are a lot of colleagues here today. And I know that I've gone over our limit of five minutes. I hope we will be able to go around again. I have some other questions to ask you at a later time.

Mr. **Kildee**. [presiding] Thank you.

We, in effect, accredit the accreditation agencies. What criteria do we use in determining that they are really valid and viable and reputable accreditation agencies? What criteria does the department use?

Mr. **Sanders**. We have a regulatory structure that guides the process, Mr. Chairman, ranging from the type of standards to uniform enforcement and so forth. All of them intend to get at and assure that quality is present in the decisions that the accrediting bodies make.

The process, itself, involves a petition to the Secretary's Advisory Committee, that staff analyzes the institution's petition against those standards—which I would be happy to give you a copy of those regulations if you would like—and then the determination by that advisory body and a recommendation to the Secretary, who eventually makes the decision.

Mr. **Kildee**. How many were not recognized as valid or reputable or reliable accreditation agencies last year?

Mr. **Sanders**. In the last year, I believe, maybe two or three petitions were not approved.

Mr. **Kildee**. Out of how many was that?

Mr. **Sanders**. I'm not sure that I know a total, but I know the paper work was a fairly substantial—out of 27.

Mr. **Kildee**. Out of 27, 2 or 3 were turned down.

Mr. **Sanders**. Yes.

Mr. **Kildee**. Just one other question and I'll defer to the other members. Do you have any special suggestions as to how we deal with proprietary schools that may serve a high-risk clientele, particularly in our larger cities. For example, a medical technology school in a larger city may actually be supplying those who do graduate qualified people to the medical profession, but because they admit a high-risk clientele, there may be a large default rate. Do you have any special suggestions as to how we deal with schools like that?

Mr. **Sanders**. That's been a very difficult dilemma for us even, Mr. Chairman, as we've tried to frame the policies that we bring to you, and recognizing the relationship between even types of students and default rates and concentration of those students in some institution. I do think, overall, though, that we hold to the belief that the provision of quality education does increase the probability of success and, therefore, the ability to repay loans.

I think this is something that we've just got to work on: What are the tolerable levels? I think maybe you have done that, as we have, as we debated about where exactly to fix those acceptable limits before we cut off a school in setting the limits on the 3 year average before terminating a school's eligibility automatically.

Mr. **Kildee**. Thank you.

Mr. Gunderson?

Mr. **Gunderson**. Thank you very much, Mr. Chairman.

Mr. Sanders, I'm going to follow up with this general comment you just made in response to Mr. Kildee. What information can you give us on the breakdown of the defaults as full-time students versus part-time, traditional versus nontraditional? What kind of data do you have regarding that as it affects the Guaranteed Student Loan program?

Mr. **Sanders**. If I might, Mr. Gunderson, let me defer to one of my colleagues who knows the data.

May we put that data together and provide it to you? Apparently staff does not have it at their fingertips either.

Mr. **Gunderson**. Okay. Do you want us to submit the questions specifically for the record so that you can follow up in that regard?

Mr. **Sanders**. That will be fine. We'll make sure you get the data, either way.

Mr. **Gunderson**. Some of it will be interesting because we haven't been able to find it anywhere. So if you've got it, you're going to be a first.

Mr. **Sanders**. If we've got it, we'll make sure you get it.

Mr. **Gunderson**. All right. Let me follow up—we've been focusing almost totally on the default rate and the program integrity of the Guaranteed Student Loan program. What about PLUS and SLS? Can you tell us anything about default rates or delinquency rates on those two programs?

Mr. **Sanders**. Again, if I might ask staff to help me out with the answer to that question.

The net default rate, Mr. Gunderson, for SLS is 6.9 percent, and for PLUS, it's 2.5 percent.

Mr. **Gunderson**. Can you give us the cost-effect of that default?

Mr. **Sanders**. Apparently not easily, Mr. Gunderson, if we might supply that to you and the committee later.

Mr. **Gunderson**. Sure. Probably the biggest problem with your present efforts at program integrity on the student loan program and one of the major proposals that you have proposed for the future is minimum course length, presently and delayed-disbursement.

Presently, any first-time borrower has to wait 30 days before they can receive that first payment in a Guaranteed Student Loan program. You are now advocating that we establish a minimum course length of 6 months or 600 hours as a condition of eligibility for all student aid programs.

How do you mesh one or either of those with summer school and with campuses which have a small, 1 month interlude program between semesters, special studies that I know some campuses do? It would seem to me that you would automatically disqualify all summer school programs.

Mr. **Sanders**. I don't think so, Mr. Gunderson, because when we're talking about a course of instruction we are talking about the entire course of instruction, not the component parts that would make up that program.

I think you're thinking, probably, in terms of what many 4 year institutions do in having a micro term, for example, between the fall and spring semesters. That would be a part of their course of instruction, and so it would not be affected by—this would not set the minimum length on each of the component parts for the entire course of instruction, which in this case might be a 4 year program, most probably. In terms of the——

Mr. **Gunderson**. So your 600 hours means, in essence, a degree——

Mr. **Sanders**. No——

Mr. **Gunderson**. You have to have a minimum of 600 hours before you receive your——

Mr. **Sanders**. You have to have a minimum of 600 hours——

Mr. **Gunderson**. You're saying no, and your staff's saying yes.

Mr. **Sanders**. It would be either a degree or certificate. Any program of instruction, it would be talking about the full program not just component parts.

Mr. **Gunderson**. Okay, that's helpful.

Are you considering any kind of provision which would allow an acceleration of that initial disbursement during summer school?

Mr. **Sanders**. Not to my knowledge.

Mr. **Gunderson**. Is there any reason you would not? Let me give you an example, because my questioning, as you have been listening, focuses significantly on the nontraditional. As of this Friday, we begin laying off the first of 4,000 people in the closing of a Uniroyal tire company in my district, of which 800 to 1200 are scheduled to go back to school for further training, of which every one will be an independent student, of which many will qualify for the first time for guaranteed student loans.

If they began summer school, immediately, as I think most of us would like them to do, you are telling them they get no assistance.

Mr. **Sanders**. No. We're not telling them that they get no assistance. It's that the timing with which the disbursement is made does not say that they are not eligible for that 60-day period.

Mr. **Gunderson**. I understand that. But the reality is that unless the school is going to forward-fund their summer school, they have no option—or else you're asking them to forward-fund when they are using any money from unemployment or elsewhere that they have simply to sustain their family. The reality of the situation is that for summer school, that 30-day delay doesn't work for the non-traditional student. And I think we need to look at some kind of a modification in those unique circumstances.

Mr. **Sanders**. Okay.

Mr. **Gunderson**. Finally, let me go to Mr. Thompson. You have made a statement on page 4 of your testimony that really jumped out at me, where you say, "The Congress and the administration will have to be sensitive to minimizing any obvious adverse consequences as reforms are implemented." What do you mean by that?

Mr. **Thompson**. Well, I'm going through a list of proposals designed, basically, to deal at the front end. We've talked about accreditation here this morning. If we tighten up on the accreditation standards, our hope is that we will be able to keep out of the program those schools that aren't providing value for money. But we have to be sensitive to the fact that any broad attempt to do that is likely to also exclude some that maybe we didn't want to exclude. We had the issue of the medical technology school that Mr. Kildee talked about.

So we have to be sensitive to the fact that, as we try to exclude the bad apples, that we don't have too many good apples that get caught up in the process. And I think that, inevitably, when you make these kind of changes, you don't know with certainty the exact effect, and you have to make your best guess and then monitor what's happening.

Mr. **Gunderson**. I don't think any of us disagrees with you in that goal. The difficulty is finding the way of achieving that, and I guess we're going to have to ask you to submit some specific recommendations in that regard, that we can consider as we try to deal with this whole area of program integrity.

Thank you, Mr. Chairman.

Chairman **Ford**. [presiding] Mr. Reed?

Mr. **Reed**. I think it's Mr. Andrews' turn.

Chairman **Ford**. Mr. Andrews?

Mr. **Andrews**. Thank you Mr. Reed and Mr. Chairman.

Gentlemen, I'm not sure who can answer this question, but I would be interested in the factual information. If I went back to my district and told people that almost half the money spent in the student loan program isn't being spent on student loans, that it's being spend on defaults of existing loans and administrative costs, they would be outraged by that.

And my question is: What percentage—you cite statistics that 44 percent of the program cost now is defaulted loans, and that's about $2.5 billion a year. Of that $2.5 billion a year, what percentage are we collecting? What percentage are we going to judgement to and getting back from the people who haven't paid the loans?

Mr. **Sanders**. Staff informs me that it's something like 80 percent, Mr. Andrews.

Mr. **Andrews**. So we're collecting 80 percent of that $2.5 billion dollars?

Mr. **Sanders**. Eventually, over time.

Mr. **Andrews**. Over time. What's the average length of time before we collect it? Let's assume someone defaults in 1990 a

$10,000 principle obligation. How much of that are we likely to get back and when?

Mr. **Sanders**. I don't know the answer, and apparently staff does not. But if we can put the data available together to give you, of what the norm would look like, I'd be happy to do that, Mr. Andrews.

Mr. **Andrews**. With the Chairman's indulgence, I would like to see that.

Secondly, what is the department's response or what actions have you taken with respect to combining your efforts with that of the Internal Revenue Service? I suspect we've all read anecdotal accounts of the same people who are not paying these loans back are also receiving Federal income tax refunds, in some cases. What are we doing to withhold those Federal income tax refunds from people who haven't paid their loans back?

Mr. **Sanders**. We are, indeed, doing that and doing it very successfully, with the help of the IRS, to those loans that have come back to the Federal Government. We do, eventually, with their assistance, go through a process of offset against their returns.

Mr. **Andrews**. How much, on an annual basis, are we collecting from that method?

Mr. **Sanders**. As much as $300 million a year.

Mr. **Andrews**. Okay. Finally, for Mr. Thompson, on page 4 of your testimony you make recommendation recommending that we explore how we can provide better incentives to give the guarantor and/or the lender a financial stake in avoiding default. What specifically would you suggest we take a look at? Should there be liability for the guarantor? Should there be reduced levels of public guarantee? What exactly should we do to give the lending agencies, guaranteed State agencies more of a stake in avoiding default?

Mr. **Thomas**. Well, first, we've suggested that there be less than 100 percent guarantee to the lender. Maybe it's only 98 percent guarantee, but at least that the lender have a little bit of his own money involved in this process.

And in terms of the incentives for the guarantee agency—you were just talking about income tax offsets; that doesn't occur until the guarantee agency decides to give up on the loan and send it to Washington. They don't have the right to go after the income tax offsets.

And there's a tendency for them to take a loan which is delinquent and let it go ahead and default, because then they get a percentage of the collections if they can make collections. If they send it to Washington, they don't get a percentage of the collections. So their incentive is to keep the loan, not use the IRS offset, and see if they can work it with their own mechanisms.

We suggested that this 30 or 35 percent—it depends on which State you're in—automatic amount that the guarantee agency gets to keep, that that provision be reexamined and, we think, ought to be repealed. And then instead, you might have payments to them which were based upon the percentage of the loans that were delinquent but didn't go into default.

In other words, how successful were they at curing delinquencies and preventing somebody from actually having a default, rather than paying them only when the default had occurred. And then, at the same time, you look at whether the defaulted loans ought to go to Washington right away and let the Department of Education use the IRS offset, and some of these other proposals.

Mr. **Andrews**. Let me just close in asking anyone on the panel to react: What would your reaction be if we were to try to establish a system where defaulted student loans became automatically a lien against real estate in each State, a lien against real estate owned by the defaulting borrower?

Mr. **Sanders**. That's an idea that I've not heard discussed, so I don't know off the cuff exactly how to react to it without a little bit more information. My assumption is that many of the students who default probably do not own real estate, so there probably is nothing there in many cases.

Mr. **Andrews**. Perhaps though, at the time of purchase, down the road, when someone purchases, a lien could attach and so forth. Thank you very much.

Thank you, Mr. Chairman.

Chairman **Ford**. Mr. Henry?

Mr. **Henry**. Thank you, Mr. Chairman. I want to express a special appreciation to Mr. Sanders, Mr. Thomas, and Mr. Thompson for what I regard as being splendid testimony. I have to tell you I'm a little bit dismayed by the kind of tepid reception you've gotten thus far.

This is a serious problem. We talk about $2.7 billion in defaults, that doesn't even count the wasted Pell Grant money, which technically isn't a default but it's a rip-off and exploitation of the system; we know that's a problem. And the $2.7 billion, as I understand, is your net loss after your collections and all the collection efforts that are out there.

None of the problems you raise are new. Every single one of them was before this committee 5 years ago, and we couldn't get this committee to act. I'm just going through them: the scam of switching from clock-hours to credit-hours in order to dole the Federal Government; paying of recruitment fees by proprietary schools; having corporations that were really shells built around the student need programs rather than genuine academic institutions—and I don't think it helps, really, to drag Harvard into it and to suggest that Harvard's doing that—using accrediting agencies as masks to legitimize these kinds of practices. They've all been there.

And I'm just pleased to see that the new Secretary has taken such a strong lead and appointing a financial undersecretary to really dig into this. I appreciate the cogency of your testimony. I appreciate and regard it as highly supportive of the report from the Comptroller General and the inspector general's testimony.

I want to commend Senator Nunn for having the courage to speak out as vigorously as he did on this 2 weeks ago. And I just hope that this committee doesn't become the bottomless pit that all this hard data kind of sinks into.

When we talk about abuses in the system, one of the things that's been forgotten is that the students are being abused too. Students are being exploited. And it's students who bear much of the responsibility of these defaults.

And while we want to address the really scandalous practices of the few that have beclouded this program so seriously, it's the students that are left holding the notes. It's the students that we talk about in terms of collecting on their IRS returns or the possibility of attaching liens on property, although in most cases they don't have property. They're the ones who have been exploited.

We need consumer protection, not just by way of looking at the accrediting agencies, but consumer protection for less than literate students. I think it was the IG's testimony that pointed out that some of these schools are recruiting illiterates, giving them money, and taking their money and giving them nothing for it.

Now there's two ways of addressing this, I think, that might be very, very clean and solve a lot of this problem for you. One is to focus on the ability to benefit provision. I've gone around and around this with the Chairman in the past. I still don't understand why we need an ability to benefit circumvention. That is to say, the basic Act requires high school completion or a high school equivalency, but then has provided for ability to benefit exceptions. And that has been the area, it seems to me, where the greatest abuse has taken place.

Is that a fair statement? That the slippery edge of this slope has been the ability to benefit exceptions, whether you're talking about the accrediting problems or the ability to benefit test, or where default rates come from. Is it not true that the defaults disproportionately are coming from these ability to benefit exceptions; is that an accurate statement?

Mr. Thompson. Yes. A disproportionate amount of them all from an ability to benefit.

Mr. Henry. Why do we need to give Federal funds for students to pursue higher education when they haven't even gotten a GED equivalency, when, in fact, every State in the Union has programs to give people GED equivalencies without cost to the Federal Government. Actually we're already pumping Federal money into adult education for that very purpose. Anyway, isn't that really kind of a double dip? Does it really make sense to put someone under a higher education program that hasn't demonstrated the discipline of getting a GED certificate? Does that make sense to you?

Mr. Sanders. Well, there has to be a standard there. I think we made some improvements this last round, Mr. Henry, with the independence and the approval of the ability to benefit test through our agency. Time will give us the answer as to whether that response has been adequate or whether we need to look at some other standards there——

Mr. Henry. My understanding of the seven tests, or so, that have been approved since the 1990 budget reconciliation agreement where we have that language, that basically, for all practical intents, they're all GED equivalency exams that are recognized by the States as such. Two or three new ones are coming down the line, but basically they're GED equivalents.

Mr. Sanders. I don't know the answer to that, as to whether they're GED equivalents or not. They may well be. We are in the interim period where we are in this transition period, accepting and approving tests that are currently on the market. And we are developing a new set of standards and a process that will approve test——

Mr. **Henry**. As you do that, could I encourage you to work very closely with Mr. Farrell, who is working on this as well with you, to look at that correlation and take that into consideration when you deal with those ability to benefit tests that you're now utilizing.

Another issue: we talk so much about trying to reform the institutions, reform the accrediting process, proving schools, increasing the lender's risk, preventing conflicts of interest, focusing on default prevention, setting reserve requirements. Why not simply have the educational institution bear part of the risk of the loan?

In other words, if the educational institution is admitting that student, and coming to the Federal Government on behalf of that student to certify that student for Federal financial assistance, isn't that educational institution making a judgement about that student?

And if you involved the educational institution in sharing the risk of the loan, wouldn't that be a lot easier—not necessarily the whole thing, but sharing some direct risk? Simply saying that if a student defaults, you'll bear a proportion of that default; won't that then affect the way an educational student judges?

Right now, the reward is that the system is used to generate money by these few, but it adds up to $3 billion if we count Pell abuses, I'm sure. Why couldn't we have the institution share some of the risk as a cosigner of the note?

Mr. **Sanders**. I think that's entirely possible, Mr. Henry. We looked at some possible scenarios like that as we looked at what States might do as they determined how they put the equivalent of the State's full faith and credit behind a guarantee agency.

My staff just wrote me a note, too, suggesting that the delayed disbursements and the prorated refunds are, indeed, other policy ways that the institution, indeed, is affected and does participate in the risks.

Mr. **Henry**. The final question is: At the very beginning of this process, early on in the year, the Chairman outlined and presented to the Congress a very broad-ranging statement in terms of the things we would be looking at in this reauthorization, including putting on the table, at least for public discussion, the possibility of changing the GSL program to a direct Federal loan in simply eliminating the middleman, the various guarantee agencies.

I know that's somewhat contentious. Is the Secretary going to come back to the committee with the recommendation in pursuit of that? It would save a lot of overhead.

I am struck by the fact that I'm getting increased communication from major universities as well as smaller institutions, private as well as public, about tremendous bookkeeping, accounting, paperwork problems in processing all the loans because the multiplicity of lending authorities, banks, guarantee agencies. I'm finding that, from the institutions' point of view, it makes a lot more sense in terms of regulatory simplicity.

From the Federal Government's point of view, whatever inefficiencies may arise from direct Federal management of the system, you're weighing that against the lender processing fees. I don't know which will cost more. But is the department actively looking at that possibility, as the former Secretary hinted at the beginning of the year?

Mr. **Sanders**. We have been actively looking at the possibilities of a direct loan program structure in place of the current structure. We've also been looking and considering what other alternative structures might be available and their effects.

The proposal that we will send forward to you in the next few days does not contain a recommendation that we move to a direct loan program. I don't know what we may later do, since we have had such studies underway. But at the current time, our proposal does not contain such a request, Mr. Henry.

Mr. **Henry**. I think conversion to a direct loan program, strengthened emphasis on a continued effort to reforming the ability to benefit provisions, utilizing a GED competency or certificate for getting higher education assistance, and involving the institution, itself, in direct risk of the loan would do more to clean up these abuses than some of the more cumbersome approaches.

But, nonetheless, I just want to conclude by saying thank you for your testimony. I think you are absolutely on target. And I'm embarrassed for the fact that some of the questioning seems to question whether you are on the right track; I think you are. I hope you succeed. Thank you very much.

Mr. **Sanders**. Thank you.

Chairman **Ford**. I thank the gentlemen who came down here. I do want to respond to one of the gentleman's questions. Wouldn't it be easier to simply accept a certificate from some school that a person was a high school graduate and forget all this ability to benefit nonsense?

As you sit here, you keep being bombarded by anecdotal anxieties that are expressed over and over again. One of them is that some—depending on who's telling the story—substantial portion of the kids getting a high school diploma can't read and comprehend well and can't compute.

If you are running a serious-minded computer program and you tested that person when they came to school and found out that they couldn't read and compute, you wouldn't care whether they had a certificate or not. The certificate doesn't try to determine whether or not the person knows enough to absorb the educational product.

On the other hand, you take the 30-year-old high school dropout in an area like Mr. Henry's and my own who, at 18, went to work for one of the major factories, and has worked steadily ever since at relatively good industrial wages. 22,500 of those jobs disappeared from our State in 1 year in one company, General Motors. And suddenly, here's a 30-year-old with 2 or 3 children to support, looking around for something to be trained for, something that would help him change his occupation.

And so if we said to him, "I'm sorry, you dropped out in the 10th or 11th grade, and in spite of the fact that you seemed to have functioned well in a work environment, we can't consider your qualifications for this unless you have the certificate," it would be kind of silly for us to spend his time and our money to send him back to get a piece of paper when so much of the public doesn't trust the piece of paper anyhow.

I'm not aware that employers are willing to accept a high school diploma as evidence that people have entry level skills for any job. We don't in the Federal Government; I know that as the former Chairman of the Post Office and Civil Service Committee. It's not like a graduate degree where there are some presumptions created. There's merely a presumption created by completion that you're not a quitter. But beyond that, it doesn't tell you a darn thing about how much educational skill you bring to the job.

I think we have to be very careful with the Federal Government trying to unsnarl these kinds of problems and define them with too much focus when the rest of America hasn't been able to do it in many hundreds of years. I think we've got to be very careful when we look at something like ability to benefit and fail to recognize ability to benefit is what it says. There should be a method employed that will determine whether the person has the ability to benefit from this education.

When I asked a truck driving school owner in my own home town if he made a determination that the person had not been permanently barred from driving in our State because they had killed somebody with a car or had repeated drunk driving violations or drug driving violations, he said it wasn't his problem, it was the State's problem to find out whether the person can get a license after he trained them.

Well, clearly to me, that's what I thought would be one of the questions you'd ask to determine if the student had the ability to benefit.

Mr. HENRY. Would the gentleman yield?

Chairman FORD. Yes.

Mr. HENRY. I know of the Chairman's strong interest in protecting the interest of the worker, the example he cites. And I think fairness ought to point out that he has very generously scheduled a separate hearing for the committee for an opportunity and panel on this very question; so we're going to face this question head on.

But my response would simply be this: first of all, what we ought to do is not then build a higher educational system around the failures of the secondary school, but he has also now triggered in the whole question of trying to get accountability in our secondary schools.

And, of course, we'll see tomorrow when the Elementary and Secondary Subcommittee meets, what kind of support there'll be for the administration's attempt to get increased measured accountability through some kind of national assessment exam where parents can have their kids tested to find out exactly where they are and what that high school diploma means, or whether we'll obfuscate that question with some kind of commission or study to look at it and report back to Congress in 5 years.

The second thing is, that worker, whether it be someone who's been there 30 years or not, in many cases is going to be able to pass that GED exam rather readily. And if he can't, he probably needs basic literacy to enter the changed workforce.

We're looking at this in terms of the nature of the changing work station, and this is where the abuse has occurred, Mr. Ford.

And I am finding that increasing numbers of the proprietary schools utilize the GED as the ability to benefit test. And it is the few who don't, but it's the few who always scream the loudest and intimidate some of their own lobbying organizations here in Congress to preventing the majority of the proprietary schools to accepting that as a criteria.

And I hope our committee staff is trying to get some handle on that to find out where proprietaries really are, because I've found, very broadly, in Michigan, strong support for GED so the good proprietaries can distinguish themselves from the ones that are messing up this program, creating this outrage on the taxpayer, and exploiting students.

And I would say that one who doesn't have that GED is probably the one most likely to be exploited by a recruiter who promises them rags to riches in 6 weeks, through some Guaranteed Student Loan program. We're trying to protect that worker every bit as much as help him.

I thank the Chairman.

Chairman FORD. Mr. Reed?

Mr. REED. Thank you, Mr. Chairman. Mr. Thomas, there's an interesting colloquy on page 27 of the Nunn report, not your testimony today, but Senator Nunn's report, about the regulations of the department, particularly with respect to accreditation. And it would seem that the department has a wide latitude at present to make significant improvements in their regulations to clarify programs and standards.

Is the department acting aggressively to reform its own regulations, right now, to clarify some of these issues?

Mr. THOMAS. Certainly there are a number of them, Mr. Reed, that are in process at the present time. You heard the Deputy Secretary talk about the branch campus reg which is in process. There's also one on conversion from clock to credit hours; that's in process. There have been some recent ones concerning the statute change on the 30 percent default and the like.

So there are a number of those that are in process not only of creating new regulations but also of changing the administrative practices within the department, that don't necessarily even require changes in the regulations. We see some indications that that is happening.

We see a new vigor in that area since Mike Farrell has come on board. The problem is, of course, that you can't tell the effects of it for a year, year and a half down the road. You see the good intent, the people moving behind it, the impetus to want to do the right thing. And my perspective is let's do the right thing, and it will work itself out, but we can't tell how effective it is for a year down the road. That's kind of difficult to measure at this point in time.

Mr. REED. But we can hopefully rely on the fact that the department is aggressively moving today to remedy, as best it can, some of the problems that they've identified with respect to this whole program; is that a fair statement?

Mr. THOMAS. I would let the Deputy Secretary answer that on the part of the department as a whole, but I would certainly add just two things. First, one is that there are a number of changes that are being made that I mentioned to you.

The other thing is that the department, a little over a year ago, created a mechanism to deal with many of these management issues, that the Deputy Secretary created a committee that deals with the results of audits and how to implement those audit recommendations, and it's called an "Audit Follow-up Committee." And that committee meets with regularity. And I've seen a lot of very significant changes coming out of it, and I'm quite encouraged by it all.

Mr. **Reed**. Just a final question on this point: When can we anticipate a conclusion of this regulatory process? Will this fall be a point at which these regulations have been put in place; is that a fair estimate?

Mr. **Sanders**. Well, it's more than just putting new regulations in process. Yes, we are moving and implementing, and we're at various stages there of the regulation development and implementation that Mr. Thomas talks about. But there are also administrative steps within existing and new authority, that we are exercising, likewise, Mr. Reed.

I might just cite one example. You have now given us the very clear authority to take emergency actions. We got the regulation in place so that we could act under it in September, as I recall, last fall, and we have done so on better then 20 occasions. We've used that emergency authority to terminate, immediately, schools' participation. Yes, we are very seriously committed to improving the overall management of this program.

Mr. **Reed**. Let me turn to another general question, and that is: It seems to me that one of your major strategies to address this problem is to shift risk to those other participant systems other than the Federal Government, particularly shifting risk to lenders, and sort of a simple-minded thought I have in my head is that lenders' capacity to absorb risk is usually a direct function of how much you want to pay them.

In this risk shifting, who is going to absorb the cost? Will it be students who can't get credit, students who can't get loans? Or will you design a system in which these costs are absorbed by other parties in the system?

Mr. **Sanders**. Well, in the case of the lenders, the cost will be absorbed by the lenders, themselves. There is no way that they can directly pass it along to students. They will have to manage the total portfolio of loans that they are making to assure that they do not produce loans that, in the aggregate, produce a greater than 20 percent default rate. But the lenders would be the ones who would pay the price whenever that happens.

In terms of the States' sharing in the risk, indeed, under some scenarios, that cost could be passed by the State along to the student, because what we're requiring is that they put the equivalent of the full faith and credit of the State behind the State's designated guarantee agency. We ask them to begin participating at the 20 percent point that we discussed earlier and pick up the cost above that.

But, indeed, they could pass those costs in some kind of a fee to a student who would indeed have to pay at the time of enrollment to create a pool that would provide those guarantees. But that, basically, would be a State determination.

Mr. **Reed**. So you don't anticipate that this would make credit availability more difficult for students, given that the risks now are being absorbed by both the States and lenders, or is that something that you can control in your proposals?

Mr. **Sanders**. Well, I think that's one of the Catch 22s in the program, because we also have to assure that there is a lender of last resort, so that, indeed, there is a place where any eligible student can go to receive a loan. One of the things, though, that we have learned is that students take more seriously this responsibility of loan obligation whenever there is certain kinds of instruction during the loan application process.

And, indeed, we believe that we might improve our default rates, not by limiting the number of students who participate, but by the seriousness with which they enter into an obligation.

Mr. **Reed**. Turning to the issue of accreditation, it seems to me that you've been talking about imposing financial responsibility on other parts of the system. The accreditation issue: Why can't you move more aggressively to ensure a proper accreditation or more stringent accreditation standards right now?

Mr. **Sanders**. I'm not sure that I fully understand the question, but there are a number of steps that we can and that we are taking and will take to improve our oversight of accrediting agencies, from strengthening the membership on the Secretary's advisory group to the processes by which our staff does the analysis and provides information to them for decision-making processes to opening up their deliberative process to make sure that, if there are problems from third parties, that they get identified and they get considered in that process. We are doing those kinds of things today.

Mr. **Reed**. Are those sufficient, in your view, to improve the quality of the schools and the quality of the instruction that we're paying for?

Mr. **Sanders**. They will improve things, yes. Whether they are sufficient, in and of themselves, I think we can only answer with the passage of time, when we see the effect of their implementation.

Mr. **Reed**. Related to the question of accreditation is a question of licensing by the States. Are you actively going to involve yourself in that?

Mr. **Sanders**. We have not proposed that as a part of reauthorization. We've looked at how we strengthen State licensing processes because, as I mentioned before, it is a mixed bag, there are States that do a very good job, there are States that do mediocre, and there are States that may not be doing a very good job at all.

And instead of proposing a direct oversight authority of the State agencies, we've acted in two ways. We've acted to work collaboratively with States to improve their oversight processes and, with these proposals, tried to give them a greater stake in exercising oversight by requiring them to share in the risk, believing that that would, in turn, strengthen their oversight.

Mr. **Reed**. Why would you take a somewhat indirect approach of asking him to share the risk rather than directly going in and establishing minimum standards for licensure which would qualify that State for participation in the Federal program? It seems to me that the direct approach might be more efficient.

Mr. **Sanders**. Well, it hasn't worked with our oversight of accrediting bodies to this point.

Mr. **Reed**. But you're improving that, as you indicated.

Mr. **Sanders**. But we're working at improving that. And I think it would be interesting to see, if we put financial consequences up, what kind of responses there might be.

Mr. **Reed**. Final question, and this is with respect to reinsurance: Are all the guarantee agencies required by law to have reinsurance arrangements? In your testimony, you've indicated that you're requesting they make claims that reinsure within 45 days?

Mr. **Sanders**. Yes. What we're requesting is authority to require them to submit their reinsurance claims to us within a 45-day period after they actually pay the lender or the holder of that loan. Right now, many of the guarantee agencies will, when they pass a certain percentage, will actually hold their claims until they pass the beginning of the next fiscal year, so that it does not adversely affect their reimbursement rate.

Mr. **Reed**. So, in effect, the Federal Government is the reinsurer for these guarantee agencies?

Mr. **Sanders**. Yes, that is correct.

Mr. **Reed**. And there's been no contemplation of any other arrangements for private reinsurance or anything else that would, again, shift the risk?

Mr. **Sanders**. Not to my knowledge, but there may have been deliberations with staff. The answer is no, there is not.

Mr. **Reed**. Thank you Mr. Sanders.

Thank you, Mr. Chairman.

Chairman **Ford**. Mr. Roemer?

Mr. **Roemer**. Thank you, Mr. Chairman. I appreciate the opportunity to ask some questions.

Mr. Farrell, I don't know who's more depressed from this testimony today, you or I, in looking at the problems that confront both legislators and the Education Department. Mr. Reed referred to some of Senator Sam Nunn's comments from his Senate Permanent Subcommittee on Investigations. These are not my words, these are the Senator's words. He says, "The subcommittee also found that through gross mismanagement, ineptitude, and neglect in carrying out its regulatory and oversight functions, the Department of Education has all but abdicated its responsibility to the students it is supposed to serve and the taxpayers whose interest it is charged with protecting."

Last week, we heard testimony that there are proprietary institutions out there that run truck driving schools without trucks, computer schools without computers, and auto repair shops teaching hands-on repair without tools. I think, gentlemen, that we are seeing our most vulnerable people exploited through this process; they are the most economically vulnerable, and the most socially disadvantaged people. I think that it is your responsibility in the Department of Education, as well as this committee's, to address this problem.

We saw, through your testimony, that the default rate was 10 percent of the costs in 1980, and now 44 percent in 1990. I guess one of my questions would be: Based on that, how many employees in the Department of Education were working on default collection in 1980, and how many do we have now, and what kind of priority is it at this point in the Department of Education?

Mr. **Sanders**. My recollection—and these are not exact numbers—in 1980, I believe, there were roughly 1800 employees that were assigned to Postsecondary Education. About 800 of them were part-time and dealing with debt collection responsibilities that we had at that time. Today there are roughly 1100 employees there—and I can get you the exact numbers—and we have requested a total additional FTD of 150 staff members between the Fiscal 1991 and the 1992 budget request.

We believe that we are understaffed, particularly in the area of having people who can do the kinds of financial analysis that is necessary both for guarantee agencies, lenders, and schools. Also we have been taking a number of aggressive steps, management-wise, to improve our oversight of each of the institutions that participate in the program.

We are now strategically targeting our monitoring of schools. We have significantly increased the numbers of such monitoring visits each year. We are strengthening and improving our monitoring and our oversight of guarantee agencies, likewise.

Mr. **Roemer**. Let me just ask as a follow-up, Mr. Sanders: When we see in the testimony that a proprietary school whose students receive the most Federal aid, received a quarter of a billion dollars, and its reported cohort default rate for 1988—this is 3 years ago—was 46 percent. Now, how does it follow that they continue to get added support eventhough the default rate is so high?

Mr. **Sanders**. Today, that school would be monitored very, very closely, simply based upon its aggregate default rate. That would have not necessarily been true 3 years ago.

Mr. **Roemer**. And now that new, improved monitoring is a result of what?

Mr. **Sanders**. That is a result of direct administrative actions that were taken late last summer, that would begin strategically targeting our school visitations.

Mr. **Roemer**. Well, let me ask you another, more specific question. Regarding the accreditation process within the Department of Education and you have acknowledged that there is a significant problem there. How many schools have been turned down for accreditation? If you could give us some kind of a aggregate total over the past 10 years; do you have that?

Mr. **Sanders**. I don't have it at my fingertips, but we can provide that for you, Mr. Roemer.

Mr. **Roemer**. Okay.

Mr. **Sanders**. As I mentioned earlier, my quick recollection is like 2 or 3, or roughly 10 percent, for this past year.

Mr. **Roemer**. Mr. Thomas, one of my questions would be, maybe, directed to you. The GAO, in this testimony, says that it cannot even audit the GSL because the accounting records are so poorly maintained. What suggestions do you have to improve that?—or, Mr. Sanders, if you want to address that question.

Mr. **Thomas**. We have done a significant amount of audit work, Mr. Roemer, in the accounting systems, and it's true that the accounting systems are in very bad condition. We've reported this over the years, as has GAO. We are, at the present, working as a team environment with the General Accounting Office trying to make sure that those records are auditable so that we can, in fact, render an opinion on the GSL program by the end of the fiscal year 1992—not 1991, but 1992.

We are hopeful that by our joint effort, we will be able to do that. Now, the CFO Act was passed in late 1990. Recently the President has named the Deputy Secretary, Ted Sanders, as a CFO, and the Deputy Secretary has now chosen a Deputy CFO. And I know from personal experience that the person chosen is very competent, because he was the chief of my audit organization, and he is now there working very diligently, trying to get those records in auditable condition.

It will not be an overnight turnaround. It's a very, very long-term, complex process. We did some audit work earlier this year, and we found that the accounting systems are out of balance into the billions of dollars when comparing the accounting systems with the bank account, if you will, at the Treasury Department. So, it's going to be a long, drawn-out process, and Mr. Sanders has got his job cut out for him as the new CFO for the department.

Mr. **Sanders**. I might add to that response, if I might Mr. Roemer, the Secretary is very, very concerned about the problems in both areas, our financial systems as well as generally in the student aid program, and is in the process of delegating to us the necessary authority to carry out and to meet this responsibility, as well as the priority on staffing and other resources necessary to address these problems.

It is not a situation that we will, as Mr. Thomas said, turn around overnight, just as this other set of problems fall into that category. But we are deeply committed to living up to those expectations that these problems will indeed be effectively addressed.

Mr. **Roemer**. I just want to conclude by saying that I felt compelled to ask you some tough questions today. I was back in my district this past weekend, where we are seeing school teachers pink slipped throughout the State of Indiana. Parents, as they shake my hand in parades, are complaining about the education system. Now, before this committee, you have testified this morning about the problems within the Department of Education, and increasing amounts of loaned money not being collected.

People back in my State, the Hoosier State, do not understand how we in Washington see these growing problems. When I go back there and argue for increased money for education, for change, for reforms, for revolutionary new methods to teach in the schools—I need to be able to tell them ehat we are cleaning this program up. I certainly hope that that is at the top of your list, Mr. Farrell, and Secretary Alexander's.

Thank you very much.

Chairman **Ford**. Mr. Sanders, we've talked about this, and I've already suggested to Mr. Farrell that we had somebody brought in as a hit man like him in the Carter administration. And he became famous for one statement, "My God, they keep the student loan records in cardboard boxes like women keep their recipes in the kitchen." And he set out to give us a computer base.

Well, almost 10 years later, Mr. Coleman and I specifically authorized the department in the last reauthorization to develop a national student loan data system. We did say, "You will not, however, use that system for the purpose of screening applicants for loans until you first get the thing going and we have some satisfaction that it's going to work, that it won't become a new bottleneck that paperwork gets piled up behind for months at a time, trying to get the applications processed."

Now, from 1986 to 1989, the excuse, according to the GAO, on page 7 of their statement, the excuse was that the administration was reluctant to go ahead and fund the design of a new system until the restriction on using it was designed. Whoever made that decision must have been a defense procurement person. Only there, am I aware, do we buy a weapon system before we find out if it will fly, and they don't always fly.

We didn't want the Department of Education to put in place a jury-rigged data system. Now I hear everybody saying, "If only we had a data system, we could tell you what's going on in the student loan program." And according to the GAO, Mr. Sanders, this requirement that you go ahead, from 1986, may be met by late 1993.

Now my quick calculation of that is that that's more than a reasonable start-up time. We can get a new bomber faster than that. And when you give us assurance that this time it's for real, that the department wants to do it, given the opportunity to still be here, I'm going to be after you regularly to find out how far along you are.

I don't think that any other place in the government would we tolerate having somebody come in now, 5 years after the fact, and saying, "Well, we didn't take you seriously before, and had we, we would now have the information. Things are going to be different." But then GAO reports, apparently from examining your people over there, that you won't be ready until late 1993.

This legislation that we're trying to reauthorize should be in place by then. Should we tell you once again in 1993 to go ahead with the data bank and establish something so that the answer won't continually come from all four quarters down there, "We just really don't know because we don't have the data on that." That's what we were getting before the last reauthorization, and we thought it would help if we specifically authorized the department to get into the data business.

It doesn't seem—and I'm not blaming you for this, because I'm familiar with how long you've been responsible for it—but what we're talking about here is not a failure of the legislation that has to be fixed as we reauthorize. We're talking about a failure of administration. We're talking about people who complain loudly and publicly, all during the administration preceding this one, about loan defaults and deadbeats and people who got away with the government's money for nothing. And then, according to this record you present us today, they did not do one thing to collect the loan.

As a matter of fact, when Mr. Reagan came in, I recall that when his budget passed in 1981 that devastated so many of our programs, that budget took the 200 loan collectors who were then employed by the Department of Education and threw them off the payroll as a money-saving device.

But the track record of your predecessors in administering the law is so bad that we're going to be extremely careful, if I have anything to say about it, about changing the law until we can get the people that are supposed to carry it out to do it. It's like having a drunk driving statute on the books and no cops that are willing to arrest people for it.

I don't want to pick up the paper and read again that Congress has not been alert to solving these problems when we have this kind of a time lapse in just getting the account straight so we know who is messing the system up.

Mr. Payne?

Mr. PAYNE. Thank you, Mr. Chairman. I just have a question or two, about the testimony by Mr. Thomas on the default reduction proposal. One of them was concerning the business of having a minimum course of 6 months or 600 hours. Then you go on to say that you would require lenders to perform credit checks, delaying loan disbursements for 60 days to first-year students with schools that have default rates of over 30 percent.

Would the student, therefore, be required to pay the beginning amount, or how would that work?

Mr. SANDERS. My understanding is that, in most cases, no, the student would not be required, it would be the school that would be expected to carry the student until the time that the disbursement was made.

Mr. PAYNE. And what would you be checking? You take a typical kid in my district that might want to go to a proprietary school. Many of them have difficultly even staying with parents because places are overcrowded. They would love to perhaps own some property but then what would you check? You would find out that the person has no money or he or she has no assets? What would you be looking for? And then once you found it, then what would you do?

Mr. SANDERS. First of all, the credit checks, by my recollection, would not be for all students but those who are over 21. And second, the first thing we would be looking for is to whether or not they had received a student loan in the past and had defaulted upon that loan.

Mr. PAYNE. So you'll be primarily be looking for violation of Title IV previously.

Mr. SANDERS. Right.

Mr. PAYNE. Okay. One of my colleagues indicated that he thought that perhaps that banks or lenders should share in. I think that that would probably be one of the worst things that could happen, once again, because a person who would be considered a bad risk—as we've seen in inner cities with redlining from banks and lenders not lending money into areas where—they call it "disinvestment," we just call it "redlining"—How would you, if that came into being, how would you prevent redlining of students, which would probably be the same practice that's been followed with property reinvestment.

Mr. SANDERS. I don't know, fully, the answer to that, but I would remind us that the Act does call for a lender of last resort so that there would, theoretically, always be a lender that the student could go to.

Mr. **Payne**. There was also a person that mentioned about this national assessment exam that he thought this was the greatest thing he's heard recently. I wonder what a national assessment, or a national test would prove. I don't think you need to spend a tremendous amount of money giving a national exam, because you could almost tell—very easily in my State—where you're going to get the higher marks.

That's going to be the suburban areas, where they have a high per-student allocation from their local tax base, because, as you know, public schools are based on the locality in our State, and, therefore, the poor towns and cities, of course, have less per capita per student. And it would just go to reason that in those areas where you have a higher per-student capita, you're going to certainly have higher test scores.

We could save a lot of money just by, rather than having national assessment test it seems to me, we should be trying to talk about how do we try to improve the quality of education, as they tried to do in my State, by taking money from richer districts and shifting it to poorer districts. And as a result, the governor will probably lose his reelection because he was talking about trying to make a level playing field.

Although when we talk about success, completion, and so forth, we have to talk about the quality of this secondary education. And by overlooking that and just talking about how many people complete and how many people default, I think we're really closing our eyes to the systemic problem of the access to quality education for students throughout this country. Would you agree with that, any one of you?

Mr. **Sanders**. I think I would generally agree with that. I would, though, point out that the goals panels, are at least seriously talking about this notion of a national test or a national system of testing—I do believe, as reflected in their discussions, that the setting of such standards and then the assessment and reporting from the goals panels be a point on a voluntary basis would actually help us in looking for improvement in all quarters of the educational system. And, indeed, they see that as a vehicle to spark the necessary improvements.

Mr. **Payne**. Just finally, I understand around 1980 there was a shift from grant programs into more loan programs; is that true? In other words, there were more grants available and less loans.

Mr. **Sanders**. The ratio of grants to loans, we've got that data, Mr. Payne.

Mr. **Payne**. Yes, I would be interested in that.

Mr. **Sanders**. And we would be happy to make it available to you, that would trace, maybe, across a decade.

Mr. **Payne**. Okay. Because one of the problems may be that a lot of the people are not paying their loans and I'd also like to know what the difference in the default is from people who have dropped out as opposed to those who have completed, who you would assume are working. I would like that to be made available if you have that.

But my final point is simply that it's difficult to pay a loan back when you don't have any job in order to pay it back. The Secretary of Education came before us recently and talked about his going through college where he had some scholarship aid, but he worked his way through, he had a job. And I also share that I had a little scholarship and also worked my way through.

The only difference in then and now is that I could get a job because there were jobs available. It's almost impossible for a student to work his or her way through school in many instances, because there are no jobs available. And so for us to take our particular experience and say, "Well, I worked my way through, therefore every youngster should be able to do that," a lot of them would really be willing to do it if they could find employment. And I know that's certainly something that you are not responsible for nor can move a wand to increase the job pool.

But I would be interested in knowing just how many are attempting to pay it back, and how do you prevent schools from moving out of places where you have high-risk students, because you might find that all proprietary schools or others will move into an area where they're going to be assured of a higher success rate therefore mitigating against those students who are left. And I know that's a tough one.

And finally, you know one successful program was the GI bill after World War II. And there were no defaults because it was all grants. And so maybe we need to take a look at the fact that maybe we need to reassess the grant/loan question again and try to see how we could, perhaps, realign in today's economy; because not only does the government get angry and frustrated with the increase in defaults, but then that student is put on a bad list and can't qualify for Title IV any other time or things of that nature and has a stigma following him or her throughout their lifetime.

And so maybe we need to take another look at that proportion of grants to loans. It would be less frustration since they're all indirectly grants anyway since they're not being paid. So rather than call them defaults, we might just take another look at the manner in which they're done.

One other point, when we get to the bank situation was when they had the National Defense Loans back in the 1960s, we found that students from my town were unable to get loans because one of the practices of the banks was that you previously had a bank account at their place because they did business with their customers, that was just good business in a normal business sense.

People on public assistance were, at that time, restricted by law from having a bank account. So when a student was accepted to college and went to a local bank to get a National Defense Loan, at that time, they were denied because there was no account that they or their parents had, and like I said, by virtue of the fact that it was illegal to have a bank account.

And once again, I get concerned about this question—we could just see a reoccurrence, of what occurred back in the 1960s.

Mr. SANDERS. Thank you, Mr. Payne. You make a number of very, very valid points. It would be difficult for me to respond to every one of them, but if I might just pick out a couple of them there, and if you want me to respond to some others, I would be delighted to do so.

Some of those are very, very tough issues that you and we must grapple with. First of all, we do not have any control over where schools are located and where they do business. It would, under the current system, be inappropriate for us to try to tell them where they must go and what they, indeed, must do.

But we have been very, very concerned and debated extensively what ought to be the balance between grants and loans. And, as you know, in the proposal that we're bringing forward to you, we're asking for a substantial increase in the Pell Grant award, going from $2400 to $3700, and for some students who excel academically an additional $500, taking them up to $4200.

There are a number of reasons why we bring that proposal to you, one of which is what's happened in terms of the purchasing power with the Pell over recent years, but another having to do with the effect of the size of the Pell award and the likelihood of default and problems later. And there is a very, very clear basis that $3,000 is kind of an important watershed or break-even point that we ought to seriously attend to as we debate this.

We also believe that raising the amount of the Pell award will give a greater number of options to particularly disadvantaged and low-income students by increasing the size of the total package that would be available to them and, therefore, opening opportunities that might not, heretofore, have been seen as really readily available to them.

Mr. **Payne**. Thank you very much.

Mr. **Sawyer**. [presiding] Thank you, Mr. Payne. I am going to forgo my questions, Mr. Coleman's on a tight schedule—well, I won't forgo, I'll return—but yield my time to Mr. Coleman who wanted to ask a follow-up question, and he is on a tight schedule.

Mr. **Coleman**. Thank you, Mr. Sawyer. I appreciate that; that's quite nice of you. And I don't want you to forego your questions, I want you to be able to ask them.

But I had a couple of comments and questions for Ted Sanders. Would you clarify a little bit more about the risk-sharing aspect you envision the States participating in with the State guarantee agencies; is that it?

Mr. **Sanders**. That's right.

Mr. **Coleman**. Briefly, just spell out a little bit how you see that working. And we're not really talking about risk-sharing for States as much as risk-sharing for students, because, unless they're precluded, the States could just require another origination fee or something to help fund whatever reserves are necessary under your proposal. And do you want to preclude that?

Mr. **Sanders**. No, our proposal would not preclude their passing that along through some kind of a fee either to the institutions in the State or to students. In fact, it would allow that to happen.

What the State would be responsible for doing is picking up the cost of defaults for defaults in the aggregate above 20 percent for their designated guarantee agency. We would hope that they would do that from their own coffers, but they could pass along, create a pool that was driven in fees to students.

Mr. **Coleman**. Well, what is the incentive then for a State to reduce the default rate? What you're doing is shifting some of the funding of this to the States in your proposal, but what's the incentive for the States then to try to reduce these defaults? If it's going to be shifted to the students or the institutions, unless they're public institutions, but—what is there in this mechanism that's going to lower the default rate?

Mr. **Sanders**. Either way, it puts either a financial or a political stake in the process for the States and, hopefully, results in a greater concern on their part as to the behavior of their guarantee agency, but, more particularly, what's going on in terms of the oversight of institutions that they, indeed, are responsible for licensing to ensure that they are, indeed, weeding out those institutions that are not of quality.

Mr. **Coleman**. Well, I think we need to work on making sure that it hurts the States in this case, not the students. Here you are allowing good students who are going to pay back their loans, to pay a fee to cover the cost of others in that State who aren't going to pay back their loans, in essence. And the inequity of that is obvious.

So I think we need to make sure that there's built-in incentives to the States. And the only way to do that is make sure that the shoe pinches their foot and not the students, or, in some cases, even an institution which the State isn't going to lose anything over if an institution has to pay up, although what they'll probably do is pass it on somehow to their students, but I won't belabor that.

We talked a lot today about—I'm sorry Mr. Ford isn't here—about proprietary schools and the default rates and so forth and this whole system and how we need to reform it. It's unfortunately not limited just to proprietary schools or for-profits.

There are traditional 4 year schools that are also having the same problems because they're utilizing some of the same tactics, that some of the ones that we have talked about today have, and they have now felt the brunt of those. At least one of those institutions in my district has, in fact, closed its door this week because of it, an institution that's been there for, I think, well over 100 years.

So there is a need to be vigorously enforcing all these rules on all types of institutions. And I must say that if there is criminal wrongdoing, I hope the department is urging and pushing the Department of Justice as much as you possibly can, because there is no deterrent here until there are some people prosecuted for doing some of the things that they've been doing.

And I don't think you need any new laws, necessarily, to do that, I just think we need to have facts developed and cases brought as much as we can to put people on notice that we're not going to allow this to happen anymore.

Mr. **Sanders**. Our inspector general, who's seated here today, Mr. Coleman, has done an admirable job in that way, not just with the Department of Justice, but also with states' attorneys. He has worked very, very closely in many cases with those people in prosecuting these cases. So it isn't just the Department of Justice.

Mr. **Coleman**. Thank you, Mr. Chairman. I will leave at this time, and I appreciate you letting me go first.

Mr. **Sawyer**. I don't want to prolong this any longer than it already has gone on. I want to echo the gratitude that many have expressed for the quality of the testimony that we've heard this morning, and just, for the record, suggest that our colleague from Michigan, who, I gather, detected some lack of concern or sanguine response to the material that has been presented this morning, perhaps just misinterprets the demeanor of the members of the committee who share your concern, as do I.

Let me just return to an area that we've been over several times for a concluding question, and that is: The incentives that are provided to guarantee agencies to share in the risk. We have, with Mr. Reed and Mr. Coleman talked around a good deal of that. I assume, for example, that, Mr. Thompson, you could comfortably subsume under your proposals the department's suggestion to include driver's license identifiers and garnishment of defaulters' wages.

Mr. Sanders, the GAO has suggested that the 35 percent bounty on default collections be repealed to and that the collection responsibility be shifted to the department. I may have missed it, but could you comment on your response to that?

Mr. SANDERS. I think that that is well worth looking at and debating, Mr. Sawyer. I would not be prepared today to support that. I would also want to know a little bit more about the history of the program, too, because my understanding—and I'm not seeped in the details of this program—but that in the original creation of this structure is that in setting the diminishing amount that the guarantee agencies would be paid in reinsurance claims, you try to build an incentive for them on the other side that would have them to work those defaulted loans and get them back into repayment. And their incentive was to be able to recover part of those costs by being able to work those loans.

And so when we do something like this, we do need to consider what are the larger effects on the financial stability of these guarantee agencies if they continue to exist. And I would want to weigh all of those things very, very carefully before I said we should immediately return those loans.

I think there are other options that we should and that we are looking at very seriously. That is when in the process, if not immediately, those loans should be required to be returned to the Federal Government so that they might be worked in the additional processes that we have here.

I think the suggestion is in the right direction. It might not be exactly the right remedy for us. We ought to look at those other options, too, and understand the larger affect on these institutions.

Mr. SAWYER. Well, I thank you very much. Let me reiterate gratitude for the quality of the testimony this morning. I would associate myself with the observation that we may well have raised more questions than we've answered, but that's the first step in answering them. Thank you very much for being here.

If there's no further business to come before the committee, we stand adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Additional material submitted for the record follows.]

JOSEPH M. GAYDOS
20th District, Pennsylvania

Committees
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June 5, 1991

Ted Sanders
Undersecretary
U.S. Department of Education
Washington, D.C. 20202

Dear Mr. Sanders:

I was unable to ask the following questions when you testified before the Committee on Education and Labor Subcommittee on Postsecondary Education May 29, 1991.

1. When do you think the Department's financial records will be in a condition that will allow GAO to complete the mandated audit of the student loan insurance fund?

2. The Inspector General has found that the Institutional Data System the Department uses has a substantial amount of missing information. How complete and correct is the information now? And, how soon will it be 100 percent complete and correct?

Your cooperation and prompt attention by replying to these questions by June 17, 1991 is greatly appreciated.

Sincerely,

Joseph M. Gaydos
Member of Congress

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON DC 20202

JUL 10 1991

Honorable Joseph M. Gaydos
Committee on Education and Labor
House of Representatives
Washington, DC 20515

Dear Congressman Gaydos:

This is in response to your letter of June 5, 1991, with follow-up questions from my May 29, 1991 hearing. Enclosed are my responses to these questions.

If you would like further information, I will be happy to respond.

Sincerely,

Ted Sanders

Ted Sanders
Under Secretary and
Chief Financial Officer

Enclosure

HEA Reauthorization Hearing Questions

Question: When do you think the Department's financial records will be in a condition that will allow GAO to complete the mandated audit of the student loan insurance fund?

Answer: GAO said they could not audit the Guarantee Student Loan (GSL) program because the Department could not produce a financial statement. Because of the complexity of the GSL program and the time and resources it takes to make changes in the program and accounting systems, fiscal year 1992 will be the first year for which we will be able to produce auditable financial statements. This year, using contractors and existing resources, we have been making significant progress in preparation for providing the necessary GSL financial statements.

Question: The Inspector General has found that the Institutional Data System the Department uses has a substantial amount of missing information. How complete and correct is the information now? And, how soon will it be 100 percent complete and correct?

Answer: During the Spring of 1990, the Inspector General's Management Improvement Report on the Institutional Data System (IDS) indicated that there were missing data, particularly within the institutional eligibility subsystem. Over the Summer and Fall of 1990, the Department allocated additional personnel and contractual resources to: (1) reorganize the institutional eligibility paper files, and (2) using the reorganized files, enter missing data onto the IDS and verify existing data in the system. This project, involving the verification of data on 8,500 postsecondary education institutions, was completed in January 1991. Since the completion of the project, various approaches have been utilized to verify the accuracy of the data and make corrections where necessary. Although there have been improvements in the completeness and accuracy of the data, the verification activity continues along with enhancements to the IDS which will make the information contained therein more accurate and readily understandable by the various users.

We are currently developing an internal validation and verification plan by which quality control and assurance checks will be automatically performed on key IDS data. In addition, as soon as additional resources are in place, a system of cyclical institutional eligibility renewals and administrative and financial recertification will be implemented to update the data on approximately 2000 postsecondary institutions per year.

JOSEPH M. GAYDOS
20th District, Pennsylvania

Committees
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June 5, 1991

The Honorable James B. Thomas, Jr.
Inspector General
U.S. Department of Education
Washington, D.C. 20202

Dear Mr. Thomas:

When you testified May 29, 1991 before the Committee on Education and Labor Subcommittee on Postsecondary Education, I was unable to ask you the following very important questions.

On page 22 of your written testimony, you said that the Department's major source of information is the guarantee agency tape dump and that you question the accuracy of some of the data in it. How inaccurate is this data and is this the data that will be the backbone of the National Student Loan Data System? Also, if this is the case, is there any way to correct this data now before we end up with a useless system that is riddled with misinformation?

Your cooperation and prompt attention by replying to these questions by June 17, 1991 is greatly appreciated.

Sincerely,

Joseph M. Gaydos
Member of Congress

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

Honorable Joseph M. Gaydos
House of Representatives
Washington, D.C. 20515

Dear Mr. Gaydos:

The following responds to your recent request for further information regarding statements contained in my May 29, 1991 testimony before your subcommittee. Specifically, you asked for our views as to the level of inaccuracy of the guarantee agency tape dump data and whether there are ways to correct this data before it is used to support the National Student Loan Data System (NSLDS).

Although we have done some analyses of tape dump data, we currently do not have a full assessment of the data accuracy. However, we have reported on some specific data inaccuracies, such as invalid social security numbers, impossible dates, and illogical field values. In addition, our discussions with program staff responsible for the tape dump, and our own analyses of tape dump data to provide information for planning and performing audits, investigations and inspections, have disclosed other discrepancies in important tape dump fields. Having noted these inaccuracies, and recognizing that the tape dump will be the starting point for many guarantee agencies developing their initial input into the National Student Loan Data System, we initiated an audit in December 1990 to review the tape dump edits and accuracy and make recommendations for improvements where appropriate. To be certain that we were auditing the most current data available, this audit was put on hold until the Department performs edit checks and basic analyses of the 1990 tape dump. It is anticipted that this will be completed in July or August of 1991.

Also, the recent Education/Office of Management and Budget Management Study has highlighted the problem of data inaccuracy. The Department is currently working toward providing better systems and data for control and decision-making and released a document in April 1991, "Improving Guaranteed Student Loan Management: Blueprint for Action," that addresses steps it plans to take in this regard. The importance of the reliability of the NSLDS is also one of the major topics currently being discussed by the members of the Student Financial Assistance Data Users Group during its discussions of the requirements for the NSLDS.

We believe that one step the Department can take to ensure the accuracy of student loan data is to require that annual/biennial non-Federal audits of guarantee agencies examine the reliability of the data. We are currently working to see that this audit objective is specifically included in the compliance supplement prepared for the conduct of these audits.

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-1510

Page 2 - Honorable Joseph M. Gaydos

For specific details on the accuracy of the tape dump and for information on how the Department is working toward ensuring the accuracy of the NSLDS, we suggest you contact Michael J. Farrell, Acting Assistant Secretary for Postsecondary Education, who has direct responsibility for those areas.

We hope this information is helpful. Should you have further questions, or if we can be of assistance in any other way, please call me or Jim Borches of my staff on 732-4068.

Sincerely,

James B. Thomas, Jr.

cc: Michael J. Farrell
Acting Assistant Secretary
for Postsecondary Education

William D. Hansen
Acting Assistant Secretary for
Legislation and Congressional Affairs

JOSEPH M. GAYDOS
20th District, Pennsylvania

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June 5, 1991

Lawrence H. Thompson
Assistant Comptroller General
for Human Resource Programs
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Thompson:

When you testified May 29, 1991 before the Subcommittee on Postsecondary Education, I was unable to ask you the following very important questions.

Is it possible for the Department's financial records to be put in an auditable condition? If so, how long do you think it will take before Congress receives an audit of the student loan insurance fund?

Your cooperation and prompt attention by replying to these questions by June 17, 1991 is greatly appreciated.

Sincerely,

Joseph M. Gaydos
Member of Congress

GAO

United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

91-1283

June 27, 1991

The Honorable Joseph M. Gaydos
House of Representatives

Dear Mr. Gaydos:

This is in response to your June 5, 1991, letter regarding my recent testimony before the House Subcommittee on Postsecondary Education on vulnerabilities in the Stafford Student Loan Program. You asked when the Department of Education's records would be in a condition for an audit of its Student Loan Insurance fund, and when that audit would be available for the Congress.

As you may know, over the 25-year history of the Fund, we have either issued an adverse audit opinion of the Fund's financial statements or declined to issue an opinion because of the poor condition of the Department's financial records. Many of the conditions causing us to issue such reports continue. The Secretary of Education, in his 1990 Federal Managers' Financial Integrity Act report, acknowledged that serious deficiencies remain in the Fund's financial management systems, and that auditable financial statements still cannot be produced.

We are working with the Department to develop a balance sheet that accurately reflects the Fund's financial condition at September 30, 1991. Once the statement is prepared, we will conduct the audit and anticipate reporting to the Congress before the end of fiscal year 1992.

Our Accounting and Financial Management Systems Division is conducting the audit. If you wish to discuss our work further, please contact Mr. Donald Wurtz, Director in charge of this assignment, at (202) 275-9449.

Sincerely yours,

Lawrence H. Thompson

Lawrence H. Thompson
Assistant Comptroller General

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

September 17, 1991

THE UNDER SECRETARY

Honorable Steve Gunderson
Subcommittee on Postsecondary Education
House of Representatives
Washington, DC 20515-4903

Dear Mr. Gunderson:

I appreciated the opportunity to speak with you and the other members of the Subcommittee on Postsecondary Education at a recent hearing on the Department's proposals to improve the student aid programs under the Higher Education Act (HEA). During that hearing, you asked several questions about "non-traditional" college students that required further research by Department staff.

First, you asked how we define the "non-traditional student." While this term does not have a specific meaning or policy significance under the HEA, it has been used for years in the education community to refer to students who are not of "traditional" college age (18 to 22). The term also has been used to describe students who are enrolled part-time, who are married, or who are financially independent of their parents.

From the research perspective, the Department's National Center for Education Statistics (NCES) is currently conducting a study that uses two additional definitions of non-traditional status: delayed entry into postsecondary education and delayed credit progression. Under the first, a student who did not begin postsecondary study within 12 months after leaving high school is considered non-traditional. Under the second NCES definition--delayed credit progression--a student who does not complete the credits required to progress from one level of class standing to the next level during a 12-month period is also considered non-traditional. While marital and dependency status may contribute to student decisions regarding entry and progress through a postsecondary course of study, these factors do not by themselves define a student as non-traditional for the purposes of the NCES study.

Using the delayed entry and delayed progression definitions, NCES is analyzing data from the National Postsecondary Student Aid Studies (NPSAS) to determine specific social and academic characteristics of non-traditional students. The results of the study are expected to be available in early 1992.

400 MARYLAND [illegible]

In responding to the remaining questions you raised at the hearing on HEA program integrity, we have used age and attendance status to identify non-traditional students. Your questions included the following:

- How do default rates for non-traditional students under Title IV loan programs compare with those for other students?

  Answer: While data are not available to determine default rates for all students who might be described as non-traditional students, we can provide the Stafford Loan/SLS default rate for students who are enrolled on a less-than-full-time basis or who are 23 years of age or older. These data should be available in the next few weeks and will be forwarded to you under separate cover.

- How many non-traditional students receive Pell Grants, and what is their average award?

  Answer: Again, available data allow only identification of Pell Grant recipients who are enrolled on a less-than-full-time basis or who are 23 years of age or older. Approximately one-half of the students receiving Pell Grants during the 1989-90 award year were 23 years of age or older, while 28 percent of all Pell Grant recipients in that year were enrolled on a less-than-full-time basis. The Department estimates that 1.7 million (52 percent) of the 3.3 million Pell Grant recipients for the 1989-90 school year met one of these criteria. The average award for these students was approximately $1,470.

- Does the Department have enrollment information on non-traditional students by postsecondary sector, i.e., proprietary, 2-year and 4-year public, and 2-year and 4-year private non-profit?

  Answer: Enrollment figures for non-traditional students, by type and control of institution, are shown on the enclosed table. Significantly, even under a definition limited to age and attendance status, non-traditional students represent 74 percent of all public 2-year college students, 44 percent of all private 4-year students, and 54 percent of all students at all institutions.

Page 3 - Honorable Steve Gunderson

These enrollment and student aid data suggest that institutions and the HEA have responded fairly well to the needs of non-traditional students. Secretary Alexander and other Department officials are concerned about ensuring continued access to postsecondary study for these students, and we look forward to working with you and the other members of the Subcommittee to that end.

Sincerely,

Ted

Ted Sanders

Enclosure

ENROLLMENT OF "NON-TRADITIONAL" POSTSECONDARY STUDENTS
Fall 1987

	25 and over	Part-time 24 and under	Total "non-traditional"	All Students
Public 2-year	2,333,545	1,033,635	3,367,180	4,541,054
Public 4-year	1,856,526	486,408	2,342,934	5,432,200
Total Public	4,190,071	1,520,043	5,710,114	9,973,254
Private 2-year	80,326	22,994	103,320	235,168
Private 4-year	961,085	162,197	1,123,282	2,558,220
Total Private	1,041,411	185,191	1,226,602	2,793,388
All Institutions	5,231,482	1,705,234	6,936,716	12,766,642

Source: NCES 1990 Digest of Education Statistics, Table 161

HEARING ON THE REAUTHORIZATION OF THE HIGHER EDUCATION ACT OF 1965

THURSDAY, MAY 30, 1991

House of Representatives,
Subcommittee on Postsecondary Education,
Committee on Education and Labor,
Washington, DC.

The subcommittee met, pursuant to call, at 9:45 a.m., Room 2175, Rayburn House Office Building, Hon. William D. Ford [Chairman] presiding.

Members present: Representatives Ford, Hayes, Lowey, Serrano, Andrews, Reed, Roemer, Coleman, Molinari, Petri, Gunderson, and Henry.

Staff present: Thomas Wolanin, staff director; Jack Jennings, education counsel; Maureen Long, legislative assistant; Gloria Gray-Watson, administrative assistant; Jo-Marie St. Martin, minority education counsel; and Beth Buehlmann, minority education coordinator; and Rose DiNapoli, minority professional staff member.

Chairman **Ford**. I am pleased to convene the Subcommittee on Postsecondary Education for its 14th hearing in a series of 44 on the reauthorization of the Higher Education Act. Today is our third hearing in a series of three which addresses one of the most crucial issues we face during reauthorization—the integrity of the Federal student financial assistance program.

We have before us today witnesses representing State guarantee agencies, the State approving agencies for Veteran's Administration programs, the State higher education officers and the Council of Postsecondary Accreditation.

Today we also, at the request of Representative Paul Henry of Michigan, have a panel of witnesses to address the issue of college athletics financial disclosure and public accountability.

I look forward to hearing the comments of our witnesses, and I'm hopeful that these hearings will bring forth suggestions for supporting public confidence in our student financial assistance programs.

Would you gentlemen like to come forward for the first panel: Don Sweeney, Legislative Director, National Association of State Approving Agencies, Augusta, Maine; Joe McCormick, Executive Director, Texas Guaranteed Student Loan Corporation, Austin Texas; Dr. Samuel Kipp, Executive Director, California Student Aid Commission, Sacramento, California; Dr. David Longanecker, Executive Director, Colorado Commission on Higher Education, Denver, Colorado; and, Dr. Thurston E. Manning, President, Council on Postsecondary Accreditation, Washington, DC.

Without objection, prepared remarks of each of the witnesses will be inserted in full in the record immediately following their oral comments.

And, without objection, Mr. Gaydos' opening statement will be inserted at this point in the record, before we hear from the witnesses.

[The prepared statement of Hon. Joseph M. Gaydos follows:]

STATEMENT OF HON. JOSEPH M. GAYDOS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

At the past two subcommittee hearings, we have heard extremely distressing testimony questioning the integrity of the student assistance programs.

Although I'm sure we will hear more bad news today, I would like to point out a little good news—no one, at any of the hearings, has said that the assistance programs are beyond repair and no one has suggested that these programs be discontinued.

Everyone seems to recognize that these programs are very important to improving the quality of students' lives and the lives of their families. And, some of the witnesses we heard earlier this month recognize that the survival of these programs is also essential to ensuring that we, as a Nation, have a well-qualified workforce and that our workforce can compete with those of other countries.

I would like to thank the Chairman for devoting 3 days of hearings to program integrity. The perception of the programs in general and how effectively they are managed will have a direct impact on future hearings when we deal with each of the programs in the Higher Education Act of 1965.

Chairman **Ford**. And we'll start with Mr. Sweeney.

STATEMENTS OF DON SWEENEY, LEGISLATIVE DIRECTOR, NATIONAL ASSOCIATION OF STATE APPROVING AGENCIES, AUGUSTA, MAINE; JOE MCCORMICK, EXECUTIVE DIRECTOR, TEXAS GUARANTEED STUDENT LOAN CORPORATION, AUSTIN, TEXAS; DR. SAMUEL KIPP, EXECUTIVE DIRECTOR, CALIFORNIA STUDENT AID COMMISSION, SACRAMENTO, CALIFORNIA; DR. DAVID LONGANECKER, EXECUTIVE DIRECTOR, COLORADO COMMISSION ON HIGHER EDUCATION, DENVER, COLORADO; AND DR. THURSTON E. MANNING, PRESIDENT, COUNCIL ON POSTSECONDARY ACCREDITATION, WASHINGTON, DC

Mr. **Sweeney**. Mr. Chairman and members of the subcommittee, thank you for the opportunity to address the topic of integrity of the Federal Title IV student financial assistance programs and how State Approving Agencies have addressed this topic in the administration of GI bill educational assistance programs.

Let me begin by providing some background information on State Approving Agencies, how they came to be and the nature of their responsibilities.

Following the enactment of the World War II GI bill, Congress and the Veteran's Administration recognized the need for an effective approval process to help curb abuses in the new program. Scrupulous schools were beginning to set up shop on every street corner in order to attract veterans and the educational assistance dollars available to them.

During their deliberations, members of the Congress determined the Federal Government was not legally nor organizationally, in a position to perform educational approval functions; thus, the birth of State Approving Agencies with general guidelines provided at the Federal level to insure stability and consistency of operations throughout the country.

Section 1771 of Title 38, United States Code, is the statutory provision that provides for State Approving Agencies, either by State law or executive appointment.

The primary responsibility of a State approving agency is to evaluate, approve or disapprove, and subsequently monitor or supervise approved programs of education and training. Let me emphasize that evaluations occur at the program level at accredited and nonaccredited educational institutions, at main campuses and branch sites, and at job training establishments.

Results of a State Approving Agency's evaluation are forwarded to the Department of Veteran's Affairs so that the department can pay or not pay, whichever is appropriate, educational assistance benefits to veterans and other eligible persons.

State Approving Agencies utilize Federal and State laws and regulations and private sector standards in evaluating educational programs. At the Federal level, 38 CFR 2140–53 and 38 CFR 2142–54 provide the general approval criteria for evaluating programs offered by educational institutions.

These criteria cover a wide range of items. Some are specifically program oriented, while others focus on the policies and practices of an institution.

Let me now describe in greater detail how State Approving Agencies, how a State Approving Agency process, may help to enhance the integrity of the administration of Federal Title IV student financial assistance programs.

State Approving Agencies are organizationally located in various State departments or agencies. Most are in departments of education or higher education. They employ personnel with educational backgrounds and experiences and, when needed, call upon the expertise of others in State government or the industry to assist them in making determinations about the approvability of a program of education.

State Approving Agency process centers around on-site annual reviews or evaluations at the program level. Some specific examples of program related items that are evaluated are curriculum, instructional methods, equipment and facilities, administrator and instructor qualifications, admissions policies and practices, progress standards, graduation requirements, policies for awarding credit for prior learning, and attendance policies.

Some other items that are more institutionally oriented include advertising, tuition, refund policies, and financial stability. It is important to note that State Approving Agencies have the authority to apply nonaccredited and/or additional criteria to accredited programs should it be warranted by the circumstances.

Throughout the application and expansion of these criteria, State Approving Agencies help to prevent schools from: (1) attracting and enrolling students from misleading and false advertising; (2) accepting students who are not academically prepared to benefit from the educational program in which they wish to enroll; (3) enrolling students in programs where either the curriculum, methods of instruction, equipment, facilities, student counseling or other program related factors are not adequate; and (4) keeping students enrolled who are not progressing satisfactorily through their educational program.

More importantly, State Approving Agencies through their work with educational institutions, help veterans and other eligible persons receive the quality education that they desire and deserve.

Although it may have just sounded so, let me mention State Approving Agencies are not perfect. However, over the 40 some years of our existence, primarily through the National Association of State Approving Agencies, we have worked to perfect State Approving Agency process and have received support from the Congress and the Department of Veteran's Affairs to do so.

In order to bring about a higher level of effectiveness and accountability, Public Law 100-323, enacted in May of 1988, called for the development of National State Approving Agency performance standards, minimum personnel qualification standards, and a national training curriculum.

The first two have been developed and implemented. The development of the national training curriculum was finalized within the week and is expected to be available for use by the end of August.

I'd like to close with three other points. The first is that State Approving Agencies serve as a single coordinating point for the Department of Veterans Affairs in establishing institutional and program eligibility for participation in GI bill educational assistance programs. They operate under a contract between the State, their State, and the Department of Veterans Affairs. The total budget for this activity for Federal fiscal year 1991 is $12 million.

Second is that another significant difference between the administration of GI bill educational assistance programs and the programs administered by the Department of Education is the distribution of funds to students. GI bill benefits are paid monthly to the recipient, and only after continued enrollment and satisfactory progress has been reported.

Student financial assistance grants and loans, on the other hand, are paid in lump sum amounts to the institution or student, in most cases, and generally at the beginning of a term. For most of the student financial assistance programs, the Department of Education has limited direct control or indirect control through guarantee agencies to withhold payments on a prorate basis or to recoup funds recently awarded.

The last and final point is that members of the National Association of State Approving Agencies believe that the State Approving Agency process used in the administration of GI bill educational assistance programs can serve as a viable model, in whole or in part, for emulation by the Department of Education to enhance the integrity and the effectiveness of the administration of Federal Title IV student financial assistance programs.

The first step would be the construction of language for a single coordinating agency in each State and the development of national standards by the United States Congress in conjunction with other concerned parties.

Please let me emphasize that the implementation of an equivalent process could only be accomplished with the financial support of the Federal Government through payments to States.

The necessary funding level would be primarily contingent upon the level of State responsibility for assisting the Department of Education in determining institutional eligibility for participation in student financial assistance programs and, secondly, the existence or extent of a monitoring or supervisory role at the State level, especially expanded beyond the level of insuring the quality of educational programs through conducting fiscal audits.

Mr. Chairman and members of the subcommittee, thank you for the opportunity to address the topic of integrity in the Federal Title IV student financial assistance programs and to describe the role of State Approving Agencies in administering GI bill programs.

I will be pleased to respond to your questions. Thank you.

[The prepared statement of Don Sweeney follows.]

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STATEMENT FOR
THE RECORD BY
C. DONALD SWEENEY
LEGISLATIVE DIRECTOR
NATIONAL ASSOCIATION OF STATE APPROVING AGENCIES
BEFORE THE
SUBCOMMITTEE ON POSTSECONDARY EDUCATION
UNITED STATES HOUSE OF REPRESENTATIVES
MAY 30, 1991

Mr. Chairman and members of the Subcommittee.

Thank you for the opportunity to address the topic of integrity in the Federal Title IV student financial assistance programs and how State Approving Agencies have addressed this topic in the administration of GI Bill educational assistance programs.

Let me begin by providing some background information on State Approving Agencies; how they came to be and the nature of their responsibilities. Following the enactment of the World War II GI Bill,

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the Congress and the Veterans Administration recognized the need for an effective approval process to help curb abuses in the new program. Unscrupulous schools were beginning to set up shop on every street corner in order to attract veterans and the educational assistance dollars available to them. During their deliberations, members of the Congress determined that the federal government was not legally nor organizationally in a position to perform educational approval functions; thus, the birth of State Approving Agencies with general guidelines provided at the federal level to insure stability and consistency of operation throughout the country. Section 1771 of title 38, United States Code, is the statutory provision that provides for State Approving Agencies either by state law or executive appointment. (copy attached)

The primary responsibility of a State Approving Agency is to evaluate, approve or disapprove, and subsequently monitor or supervise approved programs of education and training. Let me emphasize that evaluations occur at the program level; at accredited and nonaccredited educational institutions; at main campuses and branch sites; and, at job training establishments. The results of a State Approving Agency's evaluation are forwarded to the Department of Veterans' Affairs so that the Department can pay or not pay, whichever is appropriate, educational assistance benefits to veterans and other eligible persons.

State Approving Agencies utilize federal and state laws and regulations and private sector standards in evaluating educational programs. At the federal level, 38 CFR 21.4253 and 38 CFR 21.4254 provide the general approval criteria for evaluating programs offered by educational institutions. (copies attached) These criteria cover a wide range of items; some are specifically program oriented while others focus on the policies and practices of an institution. Before elaborating on these criteria and other factors which have the potential to help enhance the integrity of the administration of the Federal student financial assistance programs, it seems important to develop a context for these remarks.

Recently, much has been said and written about the misuse of public funds intended to provide support for students pursuing postsecondary education. Most of the comments have been aimed at the Federal student loan programs, either because of the actions of participating educational institutions or their students. The conclusions that have been drawn seem to center around the fact that there are fundamental problems with the processes for (1) determining institutional eligibility for participation in Federal Title IV student financial assistance programs and (2) monitoring participating institutions to insure that students receive positive outcomes from their educational experiences, to include opportunities for employment at a level where they will be able to repay student loans. I think it is important to note that the basic concerns about the student loan programs may carry over into all other forms of Federal Title IV student financial assistance and that these possibilities and their impact also should be addressed by committees of the Congress, agencies of the Executive Branch and the higher education community as a whole.

As we know, the current system for determining institutional eligibility is comprised of state licensure, private sector accreditation and the Department of Education certification process, commonly referred to as the triad. Several studies and reviews over the course of the last few years all seem to indicate that state licensure is very disjointed, fragmented, underfunded and generally not coordinated at the state level. The accreditation process, although programmatic at times, is ordinarily institutional and is comprised of voluntary peer reviews or evaluations that generally occur several years apart. The Department of Education's certification process places heavy emphasis on the outcomes of the first two components.

I would now like to return to describing how a State Approving Agency process may help to enhance the integrity of the administration of Federal Title IV student financial assistance programs. State Approving Agencies are organizationally located in various State departments or agencies, most are in Departments of Education or Higher Education. They employ personnel with educational backgrounds and experiences and, when needed, call upon the expertise of others in State government or the industry to assist them in making determinations about the approvability of a program of education. The State Approving Agency process centers around on-site, annual reviews or evaluations at the program level. Some examples of specific program related items that are evaluated are curriculum, instructional methods, equipment and facilities, administrator and instructor qualifications, admissions policies and practices, progress standards, graduation requirements, policies for awarding credit for prior learning, and attendance policies. Some other items that are more institutionally oriented include advertising, tuition, refund policies, and financial stability. It is important to note that State Approving Agencies have the authority to apply nonaccredited and/or additional criteria to accredited programs, should it be warranted by the circumstances.

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Although it may have just sounded so, let me also mention that State Approving Agencies are not perfect. However, over the forty some years of existence we have worked, primarily through the National Association of State Approving Agencies, to perfect the State Approving Agency process and have received support from the Congress and the Department of Veterans Affairs to do so.

In order to bring about a higher level of effectiveness and accountability, Public Law 100-323, enacted in May of 1988, called for the development of national State Approving Agency performance standards, minimum personnel qualification standards and a national training curriculum. The first two have been developed and implemented. The development of the National Training Curriculum will be finalized within the week and is expected to be available for use by the end of August.

I would like to close with three other points. The first is that State Approving Agencies serve as a single coordinating point for the Department of Veterans' Affairs in establishing institutional and program eligibility for participation in the GI Bill educational assistance programs. They operate under a contract between their State and the Department of Veterans' Affairs. The total budget for this activity for Federal Fiscal Year 1991 is $12 million.

The second is that another significant difference between the administration of the GI Bill educational assistance programs and the programs administered by the Department of Education is the distribution of funds to students. GI Bill benefits are paid monthly to the recipient and only after continued enrollment and satisfactory progress has been reported. Student financial assistance grants and loans, on the other hand, are paid in lump sum amounts to the institution and/or student in most cases and generally at the beginning of a term. For most of the student financial assistance programs, the Department of Education has limited direct control or indirect control, through guarantee agencies, to withhold payments on a pro rata basis or to recoup funds recently awarded.

The last and final point is that members of the National Association of State Approving Agencies believe that the State Approving Agency process used in the administration of GI Bill educational assistance programs can serve as a viable model, in whole or in part, for emulation by the Department of Education to enhance the integrity and effectiveness of the administration of Federal Title IV student financial assistance programs. The first step would be the construction of language for a single coordinating agency in each state and the development of national standards by the United States Congress in conjunction with other concerned parties. Please let me emphasize that the implementation of an equivalent process could only be accomplished with the financial support of the federal government through payments to states. The necessary funding level would be primarily contingent upon the level of state responsibility for assisting the Department of Education in determining institutional eligibility for participation in student financial assistance programs and, secondly, the existence or extent of a monitoring or supervisory role at the state level, especially if expanded beyond the level of ensuring the quality of educational programs to conducting fiscal audits.

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to address the topic of integrity in ~~of~~ the Federal Title IV student financial assistance programs and to describe the role of State Approving Agencies in administering GI Bill programs. I will be pleased to respond to your questions.

§ 1771. Designation

(a) Unless otherwise established by the law of the State concerned, the chief executive of each State is requested to create or designate a State department or agency as the "State approving agency" for such State for the purposes of this chapter and chapters 34 and 35 of this title.

(Added P.L. 88-126, § 1; amended P.L. 89-358, § 3(a)(6); P.L. 92-540, § 403(2); P.L. 94-502, § 513(a)(1).)

(b)(1) If any State fails or declines to create or designate a State approving agency, or fails to enter into an agreement under section 1774(a), the provisions of this chapter which refer to the State approving agency shall, with respect to such State, be deemed to refer to the Administrator.

(2) In the case of courses subject to approval by the Administrator under section 1772 of this title, the provisions of this chapter which refer to a State approving agency shall be deemed to refer to the Administrator.

(Added P.L. 88-126, § 1; amended P.L. 100-323, § 13(b).)

§ 21.4253 Accredited courses.

(a) *General.* A course may be approved as an accredited course if it meets one of the following requirements.

(1) The course has been accredited and approved by a nationally recognized accrediting agency or association. "Candidate for accreditation" status is not a basis for approval of a course as accredited.

(2) Credit for such course is approved by the State department of education for credit toward a high school diploma.

(3) The course is conducted under 20 U.S.C. 11-28 (vocational education).

(4) The course is accepted by the State department of education for credit for a teacher's certificate or teacher's degree.

(b) *Course objective.* Any curriculum offered by an educational institution which is a member of one of the nationally recognized accrediting agencies or associations and which leads to a degree, diploma, or certificate will be accepted as an accredited course when approved as such by the State approving agency. Any curriculum accredited by one of the specialized nationally recognized accrediting agencies or associations and which leads to a degree, diploma, or certificate will also be accepted as an accredited course when approved as such by the State approving agency. Approval of the individual subjects, required or elective, which are designated as a part of a degree curriculum will not be necessary. Such approval may include noncredit subjects that are prescribed as a required part of the curriculum. The course objective may be educational (high school diploma or a standard college degree) or it may be vocational or professional (an occupation).

(c) *Accrediting agencies.* A nationally recognized accrediting agency or association is one that appears on the list published by the Secretary of Education as required by 38 U.S.C. 1775(a). The State approving agencies may use the accreditation of these accrediting agencies or associations for approval of the course specifically accredited and approved by the agency or association.

(d) *School qualification.* A school desiring to enroll veterans or eligible persons in accredited courses will make application for approval of such courses to the State approving agency. The State approving agency may approve the application of the school when the school and its accredited courses are found to have met the following criteria and additional reasonable criteria established by the State approving agency:

(1) The institution has submitted to the State approving agency copies of its catalog or bulletin which is certified as true and correct in content and policy by an authorized representative and the publication contains:

(i) Institution policy and regulations relative to standards of progress required of the student by the institution (this policy will define the grading system of the institution, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress and a description of the probationary period, if any, allowed by the institution, and conditions of reentrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the institution and furnished the student), [redacted]

(ii) Institution policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct.

(2) Adequate records are kept by the school to show the progress of each veteran or eligible person. The records must be sufficient to show continued pursuit at the rate for which enrolled and the progress being made. They must include final grade in each subject for each term, quarter, or semester, record of withdrawal from any subject to include the last date of attendance for a resident course, and record of reenrollment in subjects from which there was a withdrawal; and may include such records as attendance for resident courses, periodic grades and examination results.

(3) The school maintains a written record of previous education and training of the veteran or eligible person which clearly indicates that appropriate credit has been given by the school for previous education and training, with the training period shortened proportionately, and the person and the Department of Veterans Affairs so notified. The record must be cumulative in that the results of each enrollment period (term, quarter or semester) must be included so that it shows each subject undertaken and the final result, i.e., passed, failed, incomplete or withdrawn.

(Authority: 38 U.S.C. 1775(b))

(4) The school enforces a policy relative to standards of conduct and progress required of the student. The school policy relative to standards of progress must be specific enough to determine the point in time when educational benefits should be discontinued, pursuant to 38 U.S.C. 1674 when the veteran or eligible person ceases to make satisfactory progress. The policy must include the grade or grade point average that will be maintained if the student is to graduate. For example, a 4 year college may require a 1.5 grade point average the first year, a 1.75 average at mid-year the second year, and a cumulative average of 2.0 thereafter on the basis of 4.0 for an A.

(5) The school maintains adequate attendance records for veterans and eligible persons enrolled in resident courses not leading to a standard college degree.

(e) *College level.* Under the provisions of paragraph (a)(1) of this section, any course at college level approved by the State approving agency as an accredited course will be accepted by the Department of Veterans Affairs as an accredited course when all of the following conditions are met:

(1) The college or university is accredited by a nationally recognized regional accrediting agency listed by the Secretary of Education or the course is accredited at the college level by a specialized accrediting agency or association recognized by the Secretary of Education; and

(Authority: 38 U.S.C. 1775)

(2) The course has entrance requirements of not less than the requirements applicable to the college level program of the school; and

(3) Credit for the course is awarded in terms of standard semester or quarter hours or by recognition at completion by the granting of a standard college degree.

(f) *Courses not leading to a standard college degree.* Any course in a school approved by the State approving agency will be accepted as an accredited course when all of the following conditions are met:

(1) The course or the school offering such course is accredited by the appropriate accrediting agency; and

(2) The course offers training in the field for which the accrediting agency is recognized and at a level for which it is recognized; and

(3) The course leads to a high school diploma or a vocational objective.

[31 FR 6774, May 6, 1966, as amended at 38 FR 14938, June 7, 1973; 40 FR 33025, Aug. 12, 1975; 43 FR 35302, Aug. 9, 1978; 48 FR 37992, Aug. 22, 1983; 50 FR 43135, Oct. 24, 1985]

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§ 21.4254 Nonaccredited courses.

(a) *General.* Nonaccredited courses are courses which are not approved as accredited courses and which are offered by a public or private, profit or nonprofit, educational institution. These include nonaccredited courses offered by extension centers or divisions, or vocational or adult education departments of institutions of higher learning.

(b) *Application.* Any school desiring to enroll veterans or eligible persons in nonaccredited courses will submit a written application to the appropriate State approving agency for approval of such courses (38 U.S.C. 1776(a)). Such application will be accompanied by not less than two copies of the current catalog or bulletin which is certified as true and correct in content and policy by an authorized owner or official of the school and will include the following:

(1) Identifying data, such as volume number, and date of publication;

(2) Names of the school and its governing body, officials, and faculty;

(3) A calendar of the school showing legal holidays, beginning and ending date of each quarter, term, or semester, and other important dates;

(4) School policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course;

(5) School policy and regulations relative to leave, absences, class cuts, makeup work, tardiness, and interruptions for unsatisfactory attendance;

(6) School policy and regulations relative to standards of progress required of the student. This policy will define the grading system of the school, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress, and a description of the probationary period, if any, allowed by the school, and conditions of reentrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the school and furnished the student;

(7) School policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct;

(8) Detailed schedule of fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges;

(9) Policy and regulations relative to the refund of the unused portion of tuition, fees, and other charges in the event the student does not enter the course, or withdraws, or is discontinued therefrom;

(10) A description of the available space, facilities, and equipment;

(11) A course outline for each course for which approval is requested, showing subjects or units in the course, type of work, or skill to be learned, and approximate time and clock hours to be spent on each subject or unit; [redacted]

(12) Policy and regulations relative to granting credit for previous education and training.

(Authority: 38 U.S.C. 1776(b))

(c) *Approval criteria.* The appropriate State approving agency may approve the application of such school when the school and its nonaccredited courses are found upon investigation to have met the following criteria:

(1) The courses, curriculum, and instruction are consistent in quality, content, and length with similar recognized accepted standards.

(2) There is in the school adequate space, equipment, instructional material, and instructor personnel to provide training of good quality.

(3) Educational and experience qualifications of directors, administrators, and instructors are adequate.

(4) The school maintains a written record of the previous education and training of the veteran or eligible person and clearly indicates that appropriate credit has been given for previous education and training, with the training period shortened proportionately, and the veteran or eligible person and the Department of Veterans Affairs so notified.

(5) A copy of the course outline, schedule of tuition, fees, and other charges, regulations pertaining to absences, grading policy, and rules of operation and conduct will be furnished the veteran or eligible person upon enrollment.

(6) Upon completion of training, the veteran or eligible person is given a certificate by the school indicating the approved course and indicating that training was satisfactorily completed.

(7) Adequate records as prescribed by the State approving agency are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress, and conduct are enforced.

(8) The school complies with all local, city, county, municipal, State, and Federal regulations, such as fire codes, building, and sanitation codes. The State approving agency may require such evidence of compliance as it deemed necessary.

(9) The school is financially sound and capable of fulfilling its commitments for training.

(10) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission, or intimation. The school will not be deemed to have met this requirement until the State approving agency:

(i) Has ascertained from the Federal Trade Commission whether the Commission has issued an order to the school to cease and desist from any act or practice, and

(ii) Has, if such an order has been issued, given due weight to that fact.

(11) The school does not exceed its enrollment limitations as established by the State approving agency.

(12) The school administrators, directors, owners, and instructors are of good reputation and character.

(13) The school either: (i) Has and maintains a policy for the pro rata refund of the unused portion of tuition, fees and charges if the veteran or eligible person fails to enter the course or withdraws or is discontinued from it before completion, or

(ii) Has obtained a waiver of this requirement. See § 21.4255.

(Authority: 38 U.S.C. 1776)

(14) Such additional reasonable criteria as may be deemed necessary by the State approving agency.

(Authority: 38 U.S.C. 1776(c))

[31 FR 6774, May 6, 1966, as amended at 33 FR 9546, June 29, 1968; 47 FR 42733, Sept. 29, 1982]

Chairman **Ford**. Thank you.

Mr. McCormick.

Mr. **McCormick**. Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear today to talk about the subject of program integrity in the Title IV student aid programs. I would ask that you accept my comments as my own personal comments and not the position of the corporation I represent, but based on my 25 years of experience in the student aid business.

I heard the testimony given yesterday, and I altered my remarks to try to put in some perspective, in my view, why we are here today to talk about program integrity.

I feel that in the 1980s there were dramatic changes to the student aid programs that affected program integrity. Some of these changes were mandated by Congress, others by the Department of Education. But other changes to our society and our economy collectively placed a severe strain on the ability of the Federal programs to serve needy students.

Program integrity is vital to the continued success of the student aid program. And that's right; I said success of the student aid program. We must be clear on what the real threats to program integrity are.

I will share with and the committee my personal views on what I perceive to be those threats, the recommendations that I feel the committee should review in the reauthorization.

The first threat to the program integrity, to me, is the Federal budget process that Congress is unfortunately coping with in the 1980s and through the 1990s. I simply would point out that many of the changes that have been made to the programs over the past 10 years were made as a result of budget targets that had to be met by budget deficits. They were not made to improve program administration. They were not made to expand access to financial aid. And, unfortunately, we're now seeing the negative effects of those changes.

Secondly, and a topic that has been talked about a great deal, the increase in the student loan defaults. Many of the changes that were made to the law in 1980 now are being seen in the form of $2.7 billion a year in student loan defaults.

A third threat to program integrity is fraud and abuse. Although we were sharply criticized for it, we were one of the first guarantee agencies to speak out loudly and aggressively against the program reviews that we experienced in the late 1980s and, I am sad to say, to some degree still exist today in the programs.

Number four is program complexity and student aid delivery. We have, unfortunately, I think, in our enthusiasm to insure that Federal dollars go to the intended target populations of eligible students, created a highly complex system of need analysis and student aid delivery that is very difficult for people to understand and to cope with.

I can honestly remember, Mr. Chairman, several years back when you could explain needs analysis to a family and they would understand it. And, unfortunately, that is not the case today.

To me, the fifth threat to the integrity of the student aid programs, as I perceive their purpose and goal, is the exclusion of the middle class from participation in student aid. If the trends of the

1980s continue into the 1990s, I feel that we will create a system of student aid delivery in which only the very poor and the very rich can afford to attend college.

In order to restore public confidence in these programs and to maintain the high standards of program integrity, I would submit to the committee the following recommendations.

Under the category of defaulted student loans, I would ask the committee entertain legislation to provide performance based regulations in the collection of loans instead of the current compliance based due diligence regulations we now have. The current incentive is to comply with the law. We need incentives to collect loans from students.

Secondly, enact legislation to front load grants to needy students in their first 2 years of college and not allow borrowing during the first 24 months of their postsecondary education. This one change could have a dramatic effect on student loan defaults and more effectively encourage postsecondary education participation.

Next, all guarantee agencies should share some risk on the guarantee of the loan and responsibility for reducing defaults. A new schedule of reinsurance should be developed which provides incentives to all agencies to reduce defaults, but which does not penalize guarantee agencies that served high risk, low income populations.

Fraud and abuse: Congress should enact legislation to require the Department of Education to develop regulations that reward good participation in this program, good performance. Schools, lenders and other participants that carry out the purposes of the program should be treated differently from schools and lenders and others that do not. Treating all participants exactly alike in all ways in costly and ineffective, and the department should have a different regulatory process.

Next, remove accreditation as a part of the process that schools complete to be certified to receive Federal funds. The Department of Education must determine the standard, the criteria, for schools receiving Federal funds and enforce it.

A recent study by the Inspector General's office indicated that during a 4 year period in the late 1980s, over 2,000 institutions applied for eligibility for Title IV assistance, and only 60 applications were denied.

Next, I would require minimum standards, Federal standards, for the State licensure of schools who wish to participate in Title IV. The Federal Government, in a variety of other programs, has provided standards for the States to comply with in order to receive Federal funds. And I think student financial aid should seriously consider a similar approach.

Under the threat of program complexity, I would recommend that you give full support to the recommendations of the Advisory Committee on Student Financial Aid, of which I've had the pleasure of serving these past 4 years in the following areas: integration of need analysis models into one model; simplifying the Federal application for student aid; and the promotion of the use of the free Federal form. Personally, I would go further and require the use of the free Federal form for all Title IV student aid.

Next, require the use of the simple needs test for all who qualify. Low income families should not be subjected to a battery of useless, unnecessary questions simply in order to feed the revenue stream of a need analysis processor.

And, finally, the middle class student should be brought back into eligibility for the program. Eliminate the calculation of home equity from the calculation of need analysis in order to qualify for aid. It is unfair to penalize families who have for years worked their lives to simply have a decent home and a modest income.

Reexamine, if you will, Mr. Chairman, the Middle Income Student Assistance Act of 1978. It was good law then, and it's good law today.

In summary, these programs must have the confidence of the American public in order to survive. We must restore that confidence because this program is far too important to fail. We've educated an entire generation of Americans. We've given this country doctors, teachers, mechanics, plumbers and nurses. We've produced taxpaying citizens who are now sending their children through higher education.

This reauthorization must make this program fair, understandable, reasonable, and as free from fraud and abuse as possible. The ultimate test of the integrity of the Federal student aid programs will be whether or not, in the minds of the American people, we are successful in delivering the American dream that these programs promise.

I thank you for the opportunity to share my thoughts with you, and would be glad to answer any questions you may have.

[The prepared statement of Mr. Joe McCormick follows:]

Written Testimony

Submitted by Joe L. McCormick
President
Texas Guaranteed Student Loan Corporation

to the
Committee on Education and Labor
United States House of Representatives

Subcommittee on Postsecondary Education

May 30, 1991

INTRODUCTION

Mr. Chairman and Members of the Subcommittee, thank you for the invitation to appear before you today to testify on the subject of "Program Integrity" in the Title IV Student Financial Aid Programs. My name is Joe McCormick and I am President of the Texas Guaranteed Student Loan Corporation. I also serve as Vice Chairman of the Advisory Committee on Student Financial Aid. It is indeed an honor to again be involved in the reauthorization of the Higher Education Act with such a dedicated and distinguished committee on postsecondary education. Please accept these comments as my own, based on 25 years of student financial aid experience, and not the official Reauthorization position of the Texas Guaranteed Student Loan Corporation.

During my higher education administration work in student financial aid, I have seen many changes to the federal student aid programs. In my own experience, most of the changes have improved aid for students and contributed to maintaining a high degree of integrity within the programs. For this I am very proud to have been a part of the good work that you, the Congress of the United States, have done to provide educational opportunity for all our nation's young people.

The 1980s brought dramatic changes to the student aid programs. Some of these changes were mandated by Congress and the Department of Education, but other changes to our society and to our economy collectively placed a severe strain on the ability of the federal programs to serve needy students. The outcome of all these changes to student aid programs seriously threatens the integrity of the program as it now exists. In my testimony, I would like to share with the Committee my view on what some of these threats are and my recommendations to strengthen the integrity of the Federal Student Aid Programs, particularly the Guaranteed Student Loan Program.

THREATS TO THE INTEGRITY OF THE PROGRAM

The Federal Budget Process and Its Impact on Student Aid

I do not pretend to have any expertise in federal budget matters, but I do wish to make one important point with some examples: The vast majority of changes to the student aid programs in the last ten years have been primarily driven by budget cutting factors designed to achieve "savings in federal expenditures" in order to meet mandated budget targets. The changes were not designed to improve student access, improve program administration, or necessarily protect and enhance the integrity of the programs. In many cases, the results have been to reduce access, complicate program administration, and threaten the integrity of the program.

We see evidence of this erosion of the effectiveness of the student aid program when: (1) the purchasing power of Pell Grants has diminished and the most needy students must rely more heavily on student loans to pay college costs and (2) guarantee agency reserves are seized by the Department of Education causing serious apprehension in the financial community about the "certainty" that guarantors will always have sufficient reserves to pay default claims.

The Alarming Rise in Defaulted Student Loans

There is no doubt that one of the most serious threats to the integrity of the Guaranteed Student Loan Program is the amount of dollars paid to lenders on defaulted student loans. In 1983, $443.8 million dollars was paid out in defaulted claims and in just seven short years the total had risen to over $2 billion dollars paid out in fiscal year 1990. Efforts to control defaults have been increased at all levels in recent years. There are a number of reasons for this increase and, in all fairness to this program, one should resist the temptation to generalize and to point fingers. The default problem must be thoroughly examined from all angles and viable solutions brought forth. It is not an insurmountable problem nor is it an indication that the Guaranteed Student Loan program is seriously flawed. It is, rather, one of the outcomes of a variety of events in the 1980s that have seriously strained the Federal Student Aid Programs.

Fraud and Abuse

Two years ago, in July 1989, the Texas Guaranteed Student Loan Corporation published a study (School or Scandal?) which looked at the effect that the proprietary school sector was having on the Guaranteed Student Loan Program. We urged swift and appropriate oversight in an effort to head off the problems we saw approaching. Congress took some preventive measures in both the Budget Reconciliation Act of 1989 and 1990. The Department of Education now has in place a Default Reduction Program.

Yet, despite legislation in several areas, we still have not eliminated abusive players from this program. Don't believe it when people tell you that fraud and abuse have been eliminated from this program. It has not.

This month in Texas we have taken action against a school that displayed serious financial and administrative problems to the extent of co-mingling their Stafford loan account and their operating account. At the same time lenders were receiving refund checks marked NSF, a school employee withdrew enough cash to pay for a luxury automobile. But the most disturbing part of this story is that the management of this school was also involved with another school that had been terminated from the program two years earlier. We believe this school was reincarnated from the terminated school offering the same programs at the same location.

In focusing our attention on the abuses of trade schools, little attention was paid to the lenders, secondary markets, and yes, Sallie Mae, which provided money and looked the other way while default rates soared. A national education publication recently quoted a student loan officer at what used to be one of the largest lenders in the program stating that he earned a $5 bonus for every student loan that was made above a minimum level.

This program cannot continue to test the patience of the American public much longer. Those who abuse this program must be eliminated from participation. I agree with Senator Nunn's committee report that this abuse is not occurring solely in the school sector -- this program has been exploited by lenders, servicers, guarantors and secondary markets. It must not be tolerated.

School Eligibility in Federal SFA Programs

The number of eligible schools in the student aid programs grew rapidly in the 1980s as did the level of their participation in Pell Grants and Guaranteed Student Loans. The vast majority of these schools were "for-profit" proprietary schools which in many cases offered short-term training programs in trucking, nursing assistant, bartending, and security guard training. In Texas alone, our participating proprietary schools grew from 164 in 1986 to over 500 by 1990. According to an Inspector General's Report in 1990, the Department of Education provided little oversight responsibility in approving new schools: in just a four-year period over 2,000 new schools were approved but only 60 schools were denied eligibility.

State licensing agencies and school accrediting bodies were no more observant during this period of growth in participating schools, as shown by the work of the Inspector General and the Congressional Research Service. Tying school eligibility to these functions has failed.

Although many participating proprietary schools provide a valuable education in a variety of fields, there were some unscrupulous schools who seriously abused the system, provided no meaningful educational experience, and left thousands of young people millions of dollars in debt with little hope of repaying their student loan. At present in Texas, over 70% of the total default claims are paid on students who attended a proprietary school.

Program Complexity and Student Aid Delivery

While the Congress, the Department of Education, the states and the schools focused on providing access to higher education, they were also just as concerned about the funds going to only the intended population of students. In our zeal to become accountable, many became insensitive to the effect that these numerous changes were having on the complexity of the application process.

Over the past 25 years an entire industry, almost a cult, has grown up around the Student Financial Aid Delivery Systems, particularly needs analysis. To insure that funds go to intended populations this group encouraged an overly regulated, highly complex Student Financial Aid Delivery System. Unfortunately, this system has itself become a barrier to providing access. Uninformed and unsophisticated families, particularly low-income and minorities, have become so frustrated with all the forms and the processes needed to receive financial aid that they get discouraged and drop out of the process altogether. The complexity of our system has helped foster an industry of paid financial consultants and overzealous commissioned proprietary school recruiters just to help these families through the labyrinth of forms and procedures needed to obtain student aid.

The Plight of the Middle Class

Although there has been an impressive commitment to the student financial aid programs in spite of the overwhelming budget deficit problems in the 1980s, there is growing evidence of a serious erosion of middle income families from participation in the student aid programs. Since 1981 the Guaranteed Student Loan program has virtually been restricted to low-income families. What is feared is a system of financing higher education in which only the very poor or the very rich can afford to go to college.

It is frustrating for families to be told that their children simply do not qualify for any federal aid, including a Guaranteed Student Loan because they own a home or earn a modest income. These are the families the Guaranteed Student Loan program was originally designed to serve. Even more insulting is not being able to explain the needs analysis system well enough for the rejected family to understand why they do not qualify. This may surprise you, Mr. Chairman, but I can remember when you could explain needs analysis to a family and it did make sense.

RECOMMENDATIONS

1. **The Federal Budget Process**

   A. **Provide for more careful examination of the impact of proposed mandatory budget deficit cuts prior to adoption.**

   B. **Enact legislation to make Pell Grants an entitlement so that needy students will know before they begin their postsecondary education the level of commitment that is available to them.**

   C. **Enact legislation to recognize and protect the Guaranty Agency Reserves set aside for payments of defaulted loans in order to restore confidence in the financial markets in the Guaranty Agency's future ability to pay claims.**

   D. **All guarantors share some responsibility for reducing defaults.** A new schedule for reinsurance should be developed which provides incentives to all agencies to reduce defaults, but which also does not severely penalize guarantors which serve low-income populations.

2. **Defaulted Student Loans**

   A. **Enact legislation to provide "performance based" regulations in the collection of loans instead of the current "compliance based, due diligence" regulations we now have.** It should be noted that the way the system of reinsurance and claims payments now works, the incentive is solely based on following the due diligence requirements. There is virtually no incentive for the noteholder to collect payments from the borrower. In Texas, 70% of the claims received from lenders have had no payments collected from the borrower.

B. **Simplify the Student Loan Deferment Process** - A recent study by the LBJ School of Public Affairs, University of Texas at Austin, showed that deferments were poorly understood. The study looked at former public and private vocational education students. A statistically significant difference between defaulters and repayers' knowledge of deferments was found. This suggests that many borrowers may be defaulting when they are actually eligible for deferments. Who can blame them for not understanding the 18 different types of deferments?

C. **Enact legislation to "front-load" grants to needy students in their first two years of college and not allow borrowing during the first 24 months of their postsecondary education.** Statistics gathered over the years in the Guaranteed Student Loan program clearly indicate a high correlation among defaulted borrowers in their first two years of school. More importantly, students should not be exposed to or asked to take on large debts during the most risky stages of their educational experience. This one change to the way we fund student aid could have a dramatically positive affect on student loan defaults.

3. **Fraud and Abuse**

A. **Enact legislation to require the Department of Education to develop regulations that reward good performance in carrying out the purposes of the programs.** Exemplary schools, lenders, guarantors, and servicers could be relieved from the more burdensome, redundant, and unnecessary rules . The position of the Department of Education that all participants must abide by all the same rules is costly and ineffective, and is actually impairing access at community colleges in my home state of Texas.

B. **Require the Secretary of Education to improve its own program compliance activities in accordance with recent recommendations by the Inspector General.**

C. Senator Nunn's committee report calls for increased oversight of all secondary markets and servicers. We endorse that recommendation as vital to stopping abuse in those sectors.

4. School Eligibility

A. **Remove accreditation as a part of the process that schools complete to be certified to receive federal funds.** School eligibility requirements should be strengthened and separated from the accreditation process. The federal government should establish its own independent standards for eligibility based on financial soundness and proven labor market demand for the occupations for which the students are being trained. In approving schools for eligibility, the Department of Education can work with State Occupational Information Coordinating Councils to determine state specific labor market needs and/or set criteria to meet national work force goals. By taking accrediting agencies out of the loop, the federal government can assert its proper authority in approving schools for Title IV student aid.

B. **Require certain minimum federal standards for the state licenser of proprietary schools who wish to participate in the federal student aid programs.**

5. Program Complexity

A. **Give full support to the recommendations of the Advisory Committee on Student Financial Aid in the following areas:** integration of needs analysis models into one model, simplifying the federal application, and the promotion of the use of the free federal form (personally, I would go further and require the use of the free federal form for all Title IV student aid).

B. **Require Guaranty Agencies, in cooperation with the Department of Education, to develop and implement common data formats to ease the use of loan data by schools, lenders, servicers, and other entities.**

C. **Direct the Department of Education to come into compliance with existing federal law by bringing the National Student Loan Data Base into full operation as soon as possible.**

D. **Require the use of the Simple Needs Test for all who qualify.** Low income families should not be subjected to a battery of useless, unnecessary questions simply in order to feed the revenue stream of an Multiple Data Entry (MDE) contractor.

6. **Middle Class Student**

A. **Eliminate the calculation of home equity from the calculation of need in order to qualify for federal financial aid.**

B. **Return middle income students to eligible status for Guaranteed Student Loans.** Revisit the Middle Income Student Aid Act of 1978; it was good law then, and it is good law now. We must provide a system of federal financial aid that does not exclude the middle class.

SUMMATION

The federal role in higher education has done much to provide educational opportunity for its citizens. And up to now, the American people, the average guy, has strongly supported this role. Although I have spent most of my time this morning pointing out the flaws in the Federal student aid programs, I personally feel that they are enormously successful programs that have already made a tremendous contribution, not only to the students they have served, but to the nation.

However, these programs must maintain positive public support to thrive. They must be fair, understandable, reasonable, and as free from fraud and abuse as possible. We must seriously review the problems that have been pointed out and we must correct the errors that have occurred; so that student aid programs can once again enjoy the public support they deserve. The ultimate test of the integrity of the federal student aid programs will be whether or not, in the minds of the American public, they are successful in delivering the "American Dream" they promise.

Thank you for this opportunity to share some of my thoughts on the subject of Program Integrity and Reauthorization of the Higher Education Act. I will be happy to answer any questions you might have.

Chairman Ford. Thank you. Mr. Samuel Kipp.

Mr. Kipp. Mr. Chairman and members, I'm Sam Kipp, Executive Director of the California Student Aid Commission, but today I'm appearing on behalf of the National Council of Higher Education loan programs as its incoming president to provide testimony on an issue that must be resolved successfully if this country is to assure genuine opportunity for its citizens to participate fully in its economy and society—the question of institutional eligibility and educational effectiveness in the Nation's guaranteed student loan program.

While it's been said before, it bears repeating here at the outset. The concepts underlining the guaranteed student loan program are fundamentally sound; the program is essential to financing postsecondary education and to promoting educational opportunity.

For millions of young students education is the only avenue of opportunity for improving their lives and those of their families. The importance of access to postsecondary education for all Americans can not be overstated, yet most of the problems we confront today will not be resolved unless we correct the glaring weaknesses in current institutional eligibility requirements and limit aid eligibility only to those institutions that can and will deliver high quality education and training to their students.

The vast majority of colleges and vocational training schools that participate in the Title IV programs are doing a good job of preparing their students for worthwhile careers. Having said that, NCHELP is unflinching and also saying that too many schools allowed to participate in the program offer precious little in the way of true education or valuable job training. In real terms, that translates into hundreds of thousands of students who have been hurt and are now worse off only because they wanted to better themselves.

The collective concern should be that every student have an opportunity to obtain a postsecondary education, not that every school have the opportunity to receive Federal financial assistance.

NCHELP believes that neither students nor taxpayers are helped by permitting unsuspecting students to be recruited by institutions with inadequate admission criteria, insufficient counseling and academic support services and substandard instructions.

Such practices have contributed to an appalling increasing in the victimization of unfortunate, unsophisticated borrowers and to the rising incidence of defaults.

The current national default problem stems not from quality institutions that are serving poor students, but from large numbers of substandard institutions that serve students poorly.

Measures included by Congress in the last two budget reconciliation acts have made meaningful progress in slowing past excesses at institutions with the worst program track records. But these measures, as valuable as they are, only provide a bandage after the serious damage to students and taxpayers alike has already been done.

Unless dramatic changes are made in the existing processing of conferring institutional eligibly, other substandard institutions will simply replace those high default rate institutions that lose eligibility, and the newcomers will be permitted 3 to 5 years to profit from their students' misfortunes.

At the present time, achieving institutional eligibility for Title IV aid only requires three things: accreditation by a recognized accrediting body; State licensure; and the certification by the Department of Education.

Yet, in practice, the Department of Education and most States simply defer to the standards and judgment of nongovernmental private trade associations to bestow accreditation and, with it, Title IV aid eligibility on their dues paying members.

Oversight policing of institutional performance by accrediting bodies is too weak, especially in the face of the enormous financial pressures that student aid provides. Policing by State licensure bodies has also been too weak in the past. The passage of much needed, more rigorous standards of institutional performance in a few States suggests that mandating minimum standards for State licensure holds considerable promise.

Policing and oversight by the Department of Education has been quite limited, although the default regulations and other recent steps promise some eventual relief. Still, the new leadership in the department must focus much needed attention on developing a considerably more demanding and effective certification and review process.

Finally, policing by guarantee agencies through compliance reviews and LS&T actions has been effective in a number of States, but such LS&T actions can only be taken after substantial evidence is produced showing a continued pattern of administrative failure at an institution, and only after hundreds of thousands of students have been victimized.

The status quo is no longer acceptable. As part of its comprehensive paper and extensive recommendations on the reauthorization of the guaranteed student loan program and other Title IV programs, NCHELP has developed 15 specific recommendations which provide a better basis for institutional participating on the student loan program by emphasizing educational effectiveness and consumer protection without arbitrarily excluding any sector of postsecondary education.

My written testimony includes all 15, but I'll mention just a few, or highlight just a few of them now: The definitions relating to institutional eligibility should be the same for all Title IV programs; GSL length of program requirements should be altered to coincide with those of Pell grant and campus space programs, not less than 600 clock hours; for the purpose of demonstrating institutional eligibility to participate in Federal student aid programs, all institutions providing occupational, vocational or technical training must measure such training in clock hours.

NCHELP recommends that stringent institutional eligibility standards be developed by the Secretary for institutions that wish to participate in student aid programs, including but not limited to mandating minimum standards for State licensure criteria which incorporate requirements relating to educational outcomes and consumer protection measures.

Those standards must be met in order for State licensing to serve as a basis for Federal student aid participation and, secondly, by requiring educational institutions to demonstrate financial and administrative competency and integrity before participating in Federal student aid programs, and as a condition for continued eligibility.

NCHELP also offers a number of recommendations dealing with strengthening accreditation and setting terms for participation by new schools, branch campuses and after changes in school ownership.

Current prohibitions on the use of commission sales people have apparently not curbed the incidence of abuse in recruiting students; therefore, NCHELP recommends that institutions not be able to use commission employees in any phase of their operations unless the sole basis of the commission is the graduation or placement of the students involved in the recruitment.

And, finally, because of the massive evidence of problems and the difficulties of regulating such institutions, NCHELP recommends that correspondence courses no longer be eligible for participation in the guaranteed student loan program.

The kinds of changes and recommendations offered by NCHELP would go a long way, if implemented, to strengthening the integrity of the programs and assuring that students receive the education and training that they're promised.

Thank you for this opportunity to appear before the subcommittee. I would be happy to answer any questions.

[The prepared statement of Dr. Samuel Kipp follows:]

Testimony of

Dr. Samuel M. Kipp, III

Executive Director, California Student Aid Commission

representing

National Council of Higher Education Loan Programs (NCHELP)

Subcommittee on Postsecondary Education

House Committee on Education and Labor

Chairman, Congressman William D. Ford

May 30, 1991

Washington, D.C.

Mr. Chairman and Members of the Subcommittee

I am Sam Kipp, Executive Director of the California Student Aid Commission. Today, I am appearing on behalf of the National Council of Higher Education Loan Programs (NCHELP) as its incoming President to provide testimony on an issue that must be resolved successfully if this country is to assure genuine opportunity for all its citizens to participate fully in its economy and society - the question of institutional eligibility and educational effectiveness in the nation's Guaranteed Student Loan Program.

While it has been said before, it bears repeating here at the outset:

- The concepts underlying the Guaranteed Student Loan Program are fundamentally sound; the program is essential to the financing of postsecondary education and to promoting educational opportunity.
- The administration and financing of the program represent a successful decentralized partnership among guarantee agencies, commercial lenders, secondary markets, servicers, the federal government and institutions of postsecondary education.

For millions of young students, beginning their lives as independent citizens, education is the only avenue of opportunity for improving their lives and those of their families. New workers will find that occupations of the future require ever-increasing levels of education and training. Growing numbers of Americans already engaged in the workplace will find themselves increasingly vulnerable to displacement by shifts in regional, national and global economies. For them, education and retraining are the difference between productive employability and prolonged, debilitating unemployment. Finally, if the nation is to hold its own in the world's economic and cultural community, it must rely on improved levels of skill, knowledge, and sophistication which only education can provide.

The importance of access to postsecondary education for all Americans cannot be overstated. Yet, most all the problems we confront today -- (1) rising default costs, (2) the imbalance between grants and loans, (3) establishing reasonable and effective standards for lender and guarantor due diligence, (4) controlling program costs while assuring adequate access to loan capital for all eligible students, and 95) restoring public confidence and support for essential financial aid programs -- will not be resolved unless we correct the glaring weaknesses in current institutional eligibility requirements and limit aid eligibility only to those institutions that can and will deliver high quality education and training to their students.

The vast majority of colleges and vocational training schools that participate in the Title IV programs are doing a good job of preparing their students for worthwhile careers and jobs that enable those who borrow to pay for higher education also to repay their student loan debts.

Having said that, NCHELP is unflinching in also saying that too many schools allowed to participate in the program -- particularly those offering high-cost, short-term vocational training -- offer precious little in the way of true education or valuable job training. In real terms that translates into hundreds of thousands of students who have been hurt and are now worse off only because they wanted to better themselves. Taxpayers have been blind-sided too. Some unscrupulous school owners have profited greatly by these losses. Such abuse has stood the basic purpose of the student loan program on its head: the beneficiaries of student aid should be students, not schools.

The collective concern should be that every student have the opportunity to obtain a postsecondary education, not that every school have the opportunity to receive federal financial assistance. NCHELP believes that neither students nor taxpayers are helped by permitting unsuspecting students to be recruited by institutions with inadequate admission criteria, insufficient counseling and academic support services, and substandard instruction. Such practices have contributed to an appalling increase in the victimization of unfortunate, unsophisticated borrowers and to the rising incidence of defaults. The current national default problem stems

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not from quality institutions serving poor students, but from large numbers of substandard institutions that serve students poorly.

Measures included by Congress in the last two Budget Reconciliation Acts have made meaningful progress in slowing the wildfire pattern of heavy borrowing -- and its corollary high student loan defaults -- at institutions with the worst program track records. But these measures, as valuable as they are, only provide a bandage after the serious damage to students and taxpayer alike has already been done. The current vagueness about educational standards has enabled some educational institutions to offer programs of questionable quality. Unless dramatic changes are made in the existing process of conferring institutional eligibility, other substandard institutions will simply replace those high default rate institutions that lose eligibility, and the newcomers will be permitted three to five years to profit from their students' misfortunes.

At the present time, achieving institutional eligibility for Title IV aid only requires three things: accreditation by a recognized accrediting body, state licensure, and certification by the Department of Education. In most states, licensure requires little more than accreditation. Consequently, the Department of Education and most states simply defer to the standards and judgment of non-governmental private trade associations that bestow accreditation, and with it Title IV aid eligibility, on their dues-paying members.

Oversight and policing of institutional performance byu accrediting bodies is weak, especially in the face of the enormous financial pressures that student aid provides. Some accrediting agencies provide strong assurance of educational quality and consumer accountability, but for others, financial aid provides a powerful incentive to look the other way when their schools are abusing aid programs and failing in their educational performance. The lack of effectiveness of some accrediting agencies is also prompted by fear of being sued by their members and of losing members through accreditation hopping.

Policing by state licensure bodies has been too weak in the past, but the passage of much needed, more rigorous standards of institutional performance in a few states suggests that mandating minimum standards for state licensing criteria which incorporate requirements relating to educational outcomes and consumer protection measures held considerable promise especially if such state licensure standards must be met as a condition for federal student aid participation.

Policing and oversight by the Department of Education has been quite limited, although the default regulations promise some eventual relief, especially the new refund requirements, delayed certification of loans, and eligibility cutoffs for high default-rate schools. The new leadership in the Department must focus much needed attention on developing a considerably more demanding and effecting certification and review process.

Policing by guarantee agencies through compliance reviews and L, S, & T actions has been effective in a number of states, but such L, S, & T actions can only be taken after substantial evidence is produced showing a continued pattern of administrative failure at an institution, and only after hundreds or thousands of students have been victimized and countless taxpayer dollars have been misused.

The status quo is no longer acceptable. There is an urgent need for heightened emphasis on educational effectiveness to assure that genuine educational opportunity is preserved and public confidence in postsecondary education and training is restored. While access must be assured, it must be access to an education which delivers solid, positive outcomes for students.

As part of its comprehensive position paper and extensive recommendations on the Reauthorization of the Guaranteed Student Loan Program and Other Title IV Programs, NCHELP has developed fifteen specific recommendations which provide a better basis for institutional participation in the student loan program by emphasizing educational effectiveness and consumer protection without arbitrarily excluding any sector of postsecondary education:

- **The definitions relating to institutional eligibility should be the same for all Title IV Programs. GSL Length-of-program requirements should be altered to coincide with those of the Pell Grant and campus-based programs (600 hours).** This would have positive benefits in the area of default reduction, since it would minimize the prospect of students relying exclusively on loans in order to finance their education. Furthermore, it would address the questionable recruiting practices of some short-term vocational institutions with very high default rates.

- **For the purpose of demonstrating eligibility to participate in federal student financial aid programs, all institutions providing occupations, vocational, or technical training must measure such training in clock hours.** This would end the current practice of course-stretching through artificial conversion from clock hours to credit hours.

- **States must become more heavily involved in oversight activities of and licensing requirements for vocational postsecondary institutions. They must monitor the quality of education and perform consumer protection functions with regard to institutions they license. These functions should include, but not be limited to, monitoring advertising or placement claims and institutional refund policies. Evidence of accreditation should no longer be the sole basis for receiving a state license to operate.**

- Although the Secretary has no authority to regulate institutional curricula, he clearly has authority to provide consumer protection guidelines to safeguard the use of public student aid funds and subsidies. **NCHELP recommends that stringent institutional eligibility standards be developed by the Secretary for institutions that wish to participate in student aid programs, including but not limited to:**

- **Mandating standards for state licensing criteria, which incorporate requirements relating to educational outcomes and consumer protection measures. Those standards must be met in order for state licensing to serve as a basis for federal student aid participation.**
- **Requiring educational institutions to demonstrate financial and administrative competency and integrity before participating in federal student aid programs and as a condition of continued eligibility.**

NCHELP then offers a number of recommendations dealing with accreditation and terms for participation by new schools, branch campuses and after changes in school ownership.

- **In order for the Secretary to recognize accrediting associations as proxies for conferring eligibility for federal student aid funds, it is necessary that he exercise stringent control over the scope of accrediting practices related to conferring such eligibility. In addition he must enforce minimum standards for review and oversight.**

  National and regional accrediting entities must be required:

  - **to incorporate stringent consumer protection standards as part of the accreditation requirements;**
  - **to inform the Secretary of all actions taken with regard to schools;**
  - **to have public support (financial and/or legal), where deemed appropriate by the Secretary, if sued by institutions for removal of accreditation;**
  - **to approve any new and/or branch site separately, and to provide for better oversight of branch campuses.**

- **Any new institution wishing to participate in the GSL Program must establish a Default Management Program, as outlined in current regulations, for the first two years of such participation.**

- An institution which changes ownership or becomes a branch should also be subject to a Default Management Program for two years after change of ownership or status. In addition, guarantee agencies should have authority to regulate loan volume of such institution.

- Any change in institutional ownership will trigger a new eligibility test for financial soundness and an examination of the new owner's record, as well as a check for previous program suspension.

- Institutional codes for GSL, Pell, and campus-based programs should be unified into a single code number. The Secretary must identify, through a separate code, all branch and subsidiary campuses.

- All institutions must have an independent third-party compliance and financial audit performed biennially which certifies that federally mandated institution-wide standards are being met. Such audits shall be available to guarantee agencies, secondary markets, lenders state licensure agencies, accrediting agencies, and the Secretary.

- Strong measures should be taken to provide for consumer protection for all students by requiring the following:
  - Refund policies should be fair and prorated.
  - Institutions that advertise must prominently disclose in such advertisements their own experience with:
    - typical amounts borrowed
    - placement rates
    - completion rates
    - salary offers
    - successful licensure of graduates.

- **A guarantee agency shall require a participation agreement with an institutions served by the agency.**

- **L, S, & T actions must be effective across agency lines immediately and the Secretary must be instructed that the word "disqualify" in section 422 may mean suspension or limitation -- not necessarily termination. The Secretary must act with due speed on agency L, S, & T actions; if he fails to overturn an agency's on procedural grounds within 60 days, that decision is automatically extended to all other guarantors.**

- Current prohibitions on the use of commissioned salespersons have apparently not curbed the incidence of abuses in recruiting students. Therefore, NCHELP **proposes that institutions not be able to use commissioned employees in any phase of their operations, unless the sole basis of the commission is the graduation or placement of the students involved in the recruitment.**

- Correspondence education is almost impossible to monitor, and course length (which determines institutional eligibility) is difficult to verify. Costs of such programs are minimal, and all too often a Guaranteed Student Loan becomes a vehicle of basic student living support rather than assistance to defray educational costs. Therefore, NCHELP **recommends that correspondence courses no longer be eligible for participation in the Guaranteed Student Loan Program.**

Thank you for this opportunity to appear before the Subcommittee. I would be happy to answer any questions.

Chairman **Ford**. Mr. Longanecker.

Mr. **Longanecker**. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to testify to you today on the reauthorization of the Higher Education Act, specifically, on the issue of institutional eligibility for Federal student financial aid programs.

I'm David Longanecker. I'm the Executive Director of the Colorado Commission on Higher Education and President-elect of the State Higher Education Executive Officers Organization, on whose behalf I speak to you today.

As you know, institutional eligibility for participation in the Federal student aid programs has traditionally involved the so-called triad—the three stage process that includes being accredited by a legitimate accrediting agency, being licensed by the State in which the institution operates, and being certified by the U.S. Department of Education.

Until recently, there was general faith that these three requirements assured program integrity. That was certainly their intent. Mounting evidence, however, has made it clear that the triad is no longer achieving its purpose.

The current system for establishing institutional eligibility is both confusing and ineffective. Little, if any, communication exists among the three parties involved.

The reasons lie not with any one of the parties, but with all three and with the process. Our major concern within SHEEO are greatest with the role of the States which, in many cases, simply haven't done an adequate jobs in the State licensure function. The States are highly inconsistent in their standards, with some States aggressively pursuing reform of licensing practices and procedures while others lag behind.

Further, standards within a single State are often inconsistent and uncoordinated, with multiple agencies performing similar tasks but using a wide range of standards and procedures. Unfortunately, this has resulted in a process that inadequately protects the consumer, the education or the training offer.

Now, that's our history. We want you to know, however that SHEEO and the States are seriously interested and committed to helping restore integrity to institutional eligibility through heightened attention to State level institutional approval activities.

SHEEO and the States have confronted this issue in three distinct ways. First, a number of States have initiated regulatory reform to improve the licensing of postsecondary institutions. If I can use Colorado, my own State, as an example, the State legislature last year consolidated the regulation of all private occupational institutions, including barbering and cosmetology, within the new agency of the Department of Higher Education.

This year, the legislature established a training assurance fund to assure that all students have the opportunity to complete the educational program in the event that the institution in which they initially enrolled goes out of business before they complete their education.

I might mention that New York has also been very active in the reform of its regulation of postsecondary institution. And, in fact, I should also mention that the legislation that we propose and have included with my testimony as part of SHEEO's was fashioned with a great deal of help from the State of New York.

Second, SHEEO itself, as an organization, has commissioned a major study of the methods and effectiveness of State licensing, which will be presented to our membership for adoption this summer. This study will call for national standards for State licensing to be adopted by the 50 States. These standards will be based on the series of universal principles that regardless of the nature of State governance, can be used to fashion State specific laws and regulations governing the licensing of postsecondary institutions.

We believe that adopting these national uniform strengthened standards will not only help assure better State practice, but will also increase substantially the integrity of the student aid programs.

And, third, and more directly related to your deliberations, the SHEEO has proposed specific legislative language in the reauthorization of the Higher Education Act that would make State licensing the centerpiece of institutional eligibility for Federal student assistance.

I should mention that the attached language to my comments has been revised from those we originally submitted to the committee.

We believe that this process would be entirely appropriate and consistent with your Federal policy goals. First, it establishes the primary locus of responsibility close to the source of regulation. And, indeed, the strong record of the VA approval process, which was discussed earlier here, demonstrates that such a process indeed can work well.

Second, it retains for the States what is constitutionally and historically their preeminent responsibility—that of providing and assuring quality delivery of educational services.

And, finally, it places the lion's share of oversight responsibility for governmental programs in the hands of governmental bodies, rather than ceding this authority to private nongovernmental accrediting groups, which for very legitimate reasons shun away from a regulatory role.

Specifically, SHEEO proposes that Congress authorize the Secretary of Education to enter into agreements with States. These agreements would designate a single State postsecondary approving agency responsible for approving institutions and educational programs which receive Title IV programs.

This proposal would not require that the licensing of institutions be done by a single agency, only that one agency be responsible for certifying to the Federal Government that all licensing bodies in the State meet these minimum Federal standards.

In the event that a State chooses not to participate, the Secretary would be free to enter into agreements with other reliable agencies or organizations which would monitor the institutions in question using federally set standards of accountability and integrity.

Operating within broad guidelines established by the Secretary and consistent with the legislation, the designated postsecondary approving agency would establish a State plan which would be submitted to the Secretary for approval or disapproval.

Our proposed legislation calls for licensing standards in nine areas. Those areas range from looking at the business viability of the institution to the educational viability of the institution.

We also propose that the Federal Government help the States pay for the cost of this increased regulation and oversight. Currently, States do either direct appropriations or institutions through fees share the cost of State licensing and regulations. A strengthened State partnership, however, especially with the establishment of minimum Federal standards for licensing will require increased costs which we believe should be borne by the Federal Government.

This model works well with the VA State approving agency system. The minimal cost of such a program would be more than offset by the significant savings and improved program delivery achieved through the reduction in fraud and abuse of Federal student aid programs and funds.

Mr. Chairman, we believe that adopting the simplified approach to determining institutional eligibility that SHEEO has proposed would reduce the confusion and ineffectiveness of the present system by unequivocally holding the States responsible for insuring both consumer protection and educational quality and by providing the resources to demonstrate this responsibility. We believe that the proper balance of oversight functions and responsibilities will finally be accomplished.

We look forward to continuing, and we hope enhanced partnership relationships between the Federal Government and the State governments and expanding educational opportunity through Title IV of the Higher Education Act.

Details of the SHEEO proposal in the form of legislative language developed in cooperation with the New York State Education Department and others are attached to my written statement.

Thank you very much for the opportunity to appear before you today. I'd be happy, as well as the others are, to answer any questions.

[The prepared statement of David Longanecker follows:]

INSTITUTIONAL INTEGRITY: THE STATE ROLE

Statement of
David A. Longanecker
Executive Director
Colorado Commission on Higher Education

On behalf of the
State Higher Education Executive Officers Association

To the Subcommittee on Postsecondary Education
Committee on Education and Labor
United States House of Representatives

May 30, 1991

State Higher Education Executive Officers
707 17th Street, Suite 2700
Denver, CO 80202

Mr. Chairman and Members of the Subcommittee, I appreciate this opportunity to testify to you today on reauthorization of the Higher Education Act, specifically on the issue of institutional eligibility for federal student assistance programs. I am David Longanecker, Executive Director of the Colorado Commission on Higher Education, and President-Elect of the State Higher Education Executive Officers (SHEEO) on whose behalf I speak to you today.

As you know, institutional eligibility for participation in the federal student aid programs has traditionally involved the so-called TRIAD, a three stage process that includes: being accredited by a legitimate accrediting agency, being licensed by the state in which the institution operates, and being certified by the U.S. Department of Education. Until recently, there was general faith that these three requirements assured program integrity. Mounting evidence, however, has made it clear that the TRIAD is no longer achieving its purpose. The current system for establishing institutional eligibility is both confusing and ineffective. Little, if any, communication exists among the three parties involved.

The reason lies not with any one of the parties, but with all three. Our major concern within SHEEO, however, is with the role of the states, which in many cases simply haven't done an adequate job in the state licensure function. The states are highly inconsistent in their standards, with some states aggressively pursuing reform of licensing practices and procedures while others lag behind. Further, standards within a single state are often inconsistent and uncoordinated, with multiple agencies performing similar tasks but using a wide range of standards and procedures. Unfortunately, this has resulted in a process that inadequately protects the consumers of the education or training offered.

That's our history. But please know that SHEEO and the states are seriously interested and committed to helping restore integrity to institutional eligibility through heightened attention to state level institutional approval activities. SHEEO and the states have confronted this issue in three distinct ways.

First, a number of states have initiated regulatory reform to improve the licensing of postsecondary educational institutions. Within Colorado, for example, the state legislature last year consolidated the regulation of all private occupational institutions within a new agency of the Department of Higher Education. This year, the legislature established a training assurance fund, to assure that all students have the opportunity to complete their educational program in the event that the institution in which they initially enroll goes out of business before they complete their education.

Second, SHEEO has commissioned a major study of the methods and effectiveness of state licensing, which will be presented to our membership this summer. This study will call for national standards for state licensing to be adopted by the fifty states. These standards will be based on a series of universal principles that, regardless of the nature of state governance, can be used to fashion state-specific laws and regulations governing the licensing of postsecondary institutions. We believe that adopting these nationally uniform, strengthened standards will not only help assure better state practice, but will also increase substantially the integrity of the federal student aid programs.

Third, and more directly related to the deliberations of your committee, SHEEO has proposed specific legislative language in the reauthorization of the Higher Education Act that would make state licensing the centerpiece of institutional eligibility for federal student assistance. (The attached language has been revised from that previously submitted.) We believe this would be entirely appropriate and consistent with your federal policy goals. First, it establishes the primary locus of responsibility close to the actual source of regulation. And, indeed, the strong record of the VA approval process demonstrates that such a process can work well. Second, it retains to the states what is constitutionally and historically their preeminent responsibility for providing and ensuring quality delivery of educational services. Finally, it places the lion's share of oversight responsibility for governmental programs in the hands of governmental bodies, rather than ceding this authority to private, non-governmental accrediting groups, which for very legitimate reasons shun away from a regulatory role.

Specifically, SHEEO proposes that Congress authorize the Secretary of Education to enter into agreements with states. These agreements would designate a single State Postsecondary Approving Agency responsible for approving institutions and educational programs which receive Title IV funds. This proposal would not require that licensing of institutions be done by a single agency; only that one agency be responsible for certifying to the federal government that all licensing bodies in the state meet these minimum federal standards. In the event a state chooses not to participate, the Secretary would be free to enter into agreements with other reliable agencies or organizations, which would monitor the institutions in question using federally set standards of accountability and integrity.

Operating within broad guidelines established by the Secretary, and consistent with the legislation, the designated State Postsecondary Approving Agency would establish a state plan, which would be submitted to the Secretary for approval or disapproval. Our proposed legislation calls for licensing standards for: institutional financial and administrative capacity; facilities, equipment, and supplies; personnel; curriculum and instruction; student support services; admissions, academic calendars, tuition charges and fees, grading, academic progress, and advertising; data on enrollments, successful completions, and finances, maintaining student records; and other standards that a state may legally require. Each state would develop appropriate state level standards within each of these areas, and submit that plan to the Secretary for his approval.

We also propose that the federal government help the state pay for the costs of increased regulation and oversight. Currently states, through direct appropriations, and institutions, through fees, share the costs of state licensing and regulation. A strengthened federal-state partnership, however, especially with the establishment of minimal federal standards for licensing, will require increased costs, which we believe should be borne by the federal government. This model works well with the VA state approving agency system. The minimal costs of such a program would be more than offset by the significant savings and improved program delivery achieved through the reduction in fraud and abuse of federal student aid programs and funds.

Mr. Chairman, we believe that adopting the simplified approach to determining institutional eligibility that SHEEO has proposed would reduce the confusion and ineffectiveness of the present system. More clearly defined responsibilities would reduce the finger pointing we now see among the major players. By unequivocally holding the states responsible for ensuring both consumer protection and educational quality, and by providing the resources to demonstrate this responsibility, we believe the proper balance of oversight functions and responsibilities will finally be accomplished.

We look forward to a continuing, and we hope enhanced, partnership between the federal and state governments in expanding educational opportunity through Title IV of the Higher Education Act. Details of the SHEEO proposal, in the form of legislative language developed in cooperation with the New York State Education Department and others, are attached to my written statement. Thank you for the opportunity to appear before you. I would be happy to answer any questions.

A NEW FEDERAL PARTNERSHIP FOR ASSURING INSTITUTIONAL INTEGRITY
AMENDMENTS TO HIGHER EDUCATION ACT TITLE IV

Title IV of the Act is amended by adding after Section 486A the following new section:

"DEMONSTRATION GRANTS FOR IMPROVED ADMINISTRATION AND THE REDUCTION OF REGULATORY BURDENS

"SEC. 486B(a) Program Authorized.--(1) The Secretary is authorized to make grants to appropriate public agencies, non-profit private organizations and institutions of higher education to demonstrate innovative approaches to the administration of student assistance programs authorized by this title designed to improve the administration of such programs and reduce regulatory burdens on eligible institutions.

"(2) No demonstration grant may be made under this section unless an application is submitted to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

"(b) Authorization of Appropriations.--There are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the 4 succeeding fiscal years to carry out the provisions of this section".

Title IV of the Act is further amended by adding at the end thereof the following new section:

"AUTHORIZATION OF APPROPRIATIONS FOR ADMINISTRATION EXPENSES

"SEC. 492.--There are authorized to be appropriated such sums as may be necessary for fiscal year 1992 and for each succeeding fiscal year thereafter for administrative expenses necessary for carrying out this title, including expenses for staff personnel and compliance activities."

Title IV of the Higher Education Act of 1965 is amended by adding at the end thereof the following new part H:

"PART - H INSTITUTIONAL INTEGRITY

"FEDERAL RESPONSIBILITIES.

"SEC. 493(a) Performance Standards.--(1) In order to strengthen the administrative capability and financial responsibility provisions of this title, the Secretary shall, after consultation with institutions of higher education, eligible institutions, guaranty agencies, educational associations representing postsecondary education, and other appropriate public agencies and non-profit private organizations, develop and carry out objective performance standards for the administration of programs authorized by this title.

"(2) In carrying out this subsection, the Secretary shall--

"(A) provide for the conduct of program reviews on a systematic basis designed to include all eligible institutions participating in programs authorized by this title; and "(B) provide for the conduct of recertification reviews of administrative capability and financial responsibility of institutions over a 5-year period on a targeted basis using objective criteria, together with provisions for automatic recertification and on-site reviews of such institutions.

"(b) Information Required.---The Secretary shall require all eligible institutions to submit to the Department detailed information on revenues and expenditures of the institution.

"STANDARDS REQUIRED FOR APPROVAL OF ACCREDITING AGENCY OR ASSOCIATION"

"SEC. 494.--No accrediting agency or association may be approved by the Secretary for the purpose of this title, unless the agency or association meets the standards established by the Secretary pursuant to this section. The Secretary shall, after notice and opportunity for a hearing, establish the standards. The standards shall require that--

"(1) the accrediting agency or association must be a state, regional, or national agency or association, and must demonstrate the ability and experience to operate as an accrediting agency or association within the state, region or nationally, as appropriate:

"(2) such agency or association accredits institutions and/or programs of higher education;

"(3) such agency or association maintains a clear distinction from any professional or trade organization having a related membership; and

"(4) such agency or association applies standards of accreditation that determine that the services, curricula, faculty, facilities, and fiscal resources of the institutions of higher education and the achievements of its students are of sufficient quality that each such institution provides satisfactory education and training.

"(5) such agency or association notifies the Secretary and the appropriate State Postsecondary Approving Agency in a timely fashion of any approval or accreditation of an eligible institution, any denial, withdrawal, or termination of approval or accreditation of an eligible institution, together with any other negative action taken with respect to an eligible institution.

"STATE APPROVING AGENCY PROGRAM"

SEC.495. STATEMENT OF PURPOSE.--It is the purpose of this part to authorize the Secretary to enter into agreements that would--

(a) establish one State Postsecondary Approving Agency in each State to approve postsecondary institutions and educational programs for the purposes of this Title; and

(b) provide Federal funds to each State Approving Agency for performing the functions required by such agreements with the Secretary.

SEC. 496. STATE APPROVING AGENCY PROGRAM ESTABLISHED.

(a) PROGRAM AUTHORITY.--The Secretary shall, in accordance with the provisions of this part, enter into agreements with each of the States to carry out the purposes of this part. If any State fails to enter into an agreement with the Secretary for the purposes of this part, the provisions of this part which refer to the State, with respect to such State, shall be deemed to refer to other appropriate arrangements made by the Secretary for program approval in that State. If any institutions eligible to participate in student assistance programs authorized under this Title are not offering educational programs in a State (e.g., foreign medical schools or schools located in U.S. territories), the provisions of this part which refer to the State, with respect to such institutions, shall be deemed to refer to the Secretary.

b) AUTHORIZATION OF APPROPRIATIONS.--For the purpose of enabling the Secretary to make payments to States which have made agreements with the Secretary under this part, there is authorized to be appropriated an amount not to exceed one percent of the student financial assistance programs funded under this Title for fiscal year 1993 and succeeding fiscal years.

(c) REIMBURSEMENT SUBJECT TO CONTINUING COMPLIANCE.--The Secretary shall make payments for agreements only to States which continue to meet the requirements of their agreements.

(d) EFFECTIVE DATE.--This program shall be effective 12 months after enactment.

SEC. 497. DEFINITIONS.--For the purposes of this part--

(a) the term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico;

(b) the term "institution" means an eligible institution defined in section 435(a) of this Title or an institution defined in section 481 of this Title that (i) has entered into a program participation agreement with the Secretary as described in section 487 of this Title and (ii) has a total annual enrollment of 100 or more students;

(c) the term "educational program" means:

(1) a postsecondary education program provided by an institution defined in subsection (b) and leading to a degree, certificate, or other educational credential recognized by the State in which the program is offered;

(2) a course of postsecondary study necessary for enrollment in a program defined in paragraph (1); and

(3) a program of postsecondary vocational or technical education provided at an institution defined in subsection (b) and designed to prepare individuals for useful employment in recognized occupations.

SEC. 498. STATE APPROVING AGENCY AGREEMENTS.

(a) STATE ORGANIZATION STRUCTURES.--

(1) Each agreement shall describe a State organizational structure that includes every institution, defined in section 497(b) of this part, in the State.

(2) For the purposes of this part, the selection of the State entity authorized to act on behalf of the State for the purpose of entering into an agreement with the Secretary shall be in accordance with the State law of each individual State with respect to the authority to make legal agreements

between the State and the Federal Government.

(3) Nothing in this part shall be construed to authorize the Secretary to require any State to adopt, as a condition for entering into an agreement, a specific State organizational structure.

(4) Nothing in this part shall be construed as a limitation on the authority of any State to adopt a State organization structure for postsecondary education agencies, institutions, or programs which is appropriate to the needs, traditions, and circumstances of that State, or as a limitation on the authority of a State entering into an agreement pursuant to this part to modify the State organizational structure at any time subsequent to entering into such agreement.

(5) Notwithstanding the provisions of paragraphs (2), (3) and (4) of this subsection, the Secretary may require each State to develop an organizational structure, subject to the limitations of paragraphs (2), (3) and (4), that incorporates every institution, as defined in this part, in that State as part of the agreement pursuant to this part. The Secretary shall provide to each State, at intervals to be specified in regulation, a list of every institution that shall be incorporated into the organizational structure of such State for the purposes of this part.

(b) CONTENTS OF AGREEMENTS--Agreements between each State and the Secretary shall contain the following features:

(1) Designation of the State entity responsible for granting State authorization to each institution in that State to offer postsecondary education;

(2) Designation of the State entity responsible for assuring that each institution in that State remains in compliance with State requirements for offering postsecondary education programs in that State;

(3) Designation of the one State Postsecondary Approving Agency that shall represent all entities of that State designated in paragraph (1) and (2) of this subsection for the purposes of this part;

(4) Assurances that the State Approving Agency will administer the program authorized by this part and will keep such records and provide such information to the Secretary as may be requested for fiscal audit and program evaluation, consistent with the responsibilities of the Secretary;

(5) Description of the relationship between that State's State Approving Agency designated for the purposes of this part and both (i) the agency or agencies designated for the purposes of Chapter 36 of Title 38 of the U.S. Code and (ii) the State loan insurance program established under section 428(b) of this Title; and

(6) Plan for performing the functions described in section 499 of this part.

(c) FEDERAL RESPONSIBILITY.--Notwithstanding any other provision of law, no State shall be required to fulfill the obligations of an agreement with the Secretary under this part unless the Secretary reimburses that State for the Federal costs, specified in section 498A of this part, for performing the State Approving Agency functions required by such agreement and no State shall be required to enter into an agreement with the Secretary under this part unless the Congress appropriates the funds to pay those Federal costs.

SEC.498A. FEDERAL REIMBURSEMENT OF STATE APPROVING AGENCY COSTS. The Secretary shall reimburse the States for the costs of performing State Approving Agency functions required by agreements with the Secretary authorized under this part. Such costs shall include reasonable and necessary expenses of salary and travel incurred by employees of such agencies and allowances for administrative expenses. The Secretary may also reimburse such agencies for work performed by their subcontractors where such work has a direct relationship to the requirements of agreements with the Secretary.

SEC. 499. FUNCTIONS OF STATE APPROVING AGENCIES.

(a) APPROVAL AUTHORITY.--The State Approving Agency shall approve an institution for the purposes of this part if the following conditions are met--

(1) The institution obtains initial authorization to offer programs by meeting published State standards for--

(A) Financial and administrative capacity at a specified scale of operations;
(B) Facilities, equipment, and supplies;
(C) Personnel;
(D) Curriculum and instruction;
(E) Student support services;
(F) Admissions, academic calendars, tuition charges and fees, grading, academic progress, and advertising;
(G) Submitting data and documents on enrollments, completions, finances, and other topics;
(H) Maintaining student records; and
(I) Other standards that a State may legally require.

(2) The institution demonstrates that it continues to comply with standards related to paragraph (1) of this subsection and that the achievement of its students are of sufficient quality that it provides satisfactory education and training.

(3) If a State does not have State standards related to paragraph (a), the institution shall meet standards prescribed by the Secretary through regulation or through an agreement with such State.

(4) If the State Approving Agency uses either (i) accreditation by a private accrediting agency or body or (ii) compliance audits performed by a State guaranty agency established under section 428(b) of this Title as a substitute for State approval of compliance with standards in paragraph (1), such substitution shall be provided for in an agreement with the Secretary.

(b) DIFFERENTIAL STANDARDS FOR APPROVAL.--A State Approving Agency may establish different standards of approval for different classes of institutions as defined by its relevant State laws and regulations. However, a State Approving Agency must have some published standard of approval for each paragraph in subsection (a) paragraph (1) for each such class of institutions unless the agreement with the Secretary under this part specifically exempts such classes of institutions as defined by the State.

(c) DISAPPROVAL AUTHORITY.--A State Approving Agency may determine that an institution or educational program should be disapproved based on its own findings or the findings of a Federal entity.

(1) STATE APPROVING AGENCY FINDINGS.--If a State Approving Agency finds that an institution is not in compliance with standards established for subsection (a), such State Approving Agency must notify the Secretary of its findings and the actions that such Agency is taking, or has taken, in response to such findings within a time period prescribed by the Secretary's regulations. If a State Approving Agency disapproves an institution or an educational program at an institution,

such State Approving Agency must notify the Secretary of its action as prescribed by regulation.

(2) SECRETARY'S FINDINGS.--If the Secretary or other Federal entity takes any action against any institution with which it has a participation agreement as provided in section 487 of this Title, the Secretary shall notify the State Approving Agency (or agencies, in the case of multi-state institutions) of such action within a time period prescribed in the Secretary's regulations and the State (or States) may disapprove such institutions for the purposes of this part.

(3) PROCEDURAL PROTECTIONS FOR DISAPPROVAL.--Institutions shall have the same procedural protections for the purposes of disapproval under this part as they have under this Title and under the relevant laws of the States.

(d) LIMIT ON STATE APPROVING AGENCY FUNCTIONS.--State Approving Agency functions shall not include either (i) performing financial and compliance audits as may be required under subsections 428 or 487 of this Act or (ii) assuming financial liability for claims against institutions which have been approved by such agencies.

(e) CONSUMER COMPLAINTS.--A State Approving Agency shall establish procedures for receiving and responding to consumer complaints about approved institutions and shall keep records of such complaints in order to determine their frequency and nature for specific institutions.

(f) PERSONNEL DEVELOPMENT.--A State Approving Agency shall provide initial and continuing training to its own personnel and other personnel in its State, including personnel at institutions subject to approval, to serve the purposes of this part.

(g) ENFORCEMENT MECHANISMS.--Nothing in this part shall restrict the authority of the States to establish mechanisms to enforce the standards established in subsection (a) or require the States to establish specific mechanisms recommended by the Secretary. The plan required in Section 498(b)(6) may include, but not be limited to, such mechanisms as:

(1) Assessing fees to finance State oversight and protect against tuition liabilities;
(2) Conducting on-site investigations;
(3) Pressing civil or criminal charges against institutions or school owners or imposing civil fines;
(4) Imposing pre-enrollment academic standards for students;
(5) Regulating the use of paid recruiters; and
(6) Establishing disclosure and reporting requirements on institutions and school owners."

Chairman **Ford**. The committee will stand in recess for a few minutes while we go to vote on the rule on military construction. And we'll resume as soon as we get a member of the majority party back here.

[Recess.]

Mr. **Hayes**. [presiding] I'd like to call on the next witness, Dr. Manning.

Mr. **Manning**. Mr. Chairman, thank you for the opportunity to present testimony. My name is Thurston Manning. I'm the President of the Council on Postsecondary Accreditation, which is commonly called by its acronym COPA. COPA is a not for profit organization whose members are accrediting organizations that meet COPA's own criteria for recognition and have joined together in support of various professional activities. COPA's members also include several of the national organizations of postsecondary education.

I have provided an extended written testimony, which I know will appear in the record, and I do not wish to repeat too much of that.

Mr. **Hayes**. Without objection, you have unanimous consent that your statement will be a part of the record of this hearing.

Mr. **Manning**. Thank you very much. I do, however, want to emphasize a couple of points.

The first is that the integrity of the federally funded student financial assistance program rests on a great many pillars. Representatives of some of those pillars are here at the witness table this morning because they include the guaranteed student loan—the guaranty agencies. They include the State VA agencies. They also include the students and the institution themselves.

As you have heard, the beginning of the entrance into the Federal student aid program is accomplished through the department's eligibility process, a process which relies upon two elements: the first, State approval, State authorization, for an institution to operate; and, secondly, accreditation.

The Federal Department of Education in operating its eligibility and certification activities also has the authority to provide additional requirements upon an institution in granting eligibility and certification.

This three-pronged arrangement of the States, accrediting agencies and the Federal Government has been in place for almost 40 years now. It is a process that has worked reasonably well, although it has experienced severe strains in recent years, largely because of the strong development of the guaranteed student loan programs.

It is a process which requires cooperation among the three components. If any one of the three components is weak, the process does not work well.

We've already heard testimony this morning and in the written testimony indicating that there are difficulties with the State authorization elements and the State Higher Education Officers have proposed ways in which that might be strengthened. I agree with them that there are problems in the State authorization procedures. The State regulations are a hodgepodge: Over 50 jurisdictions are involved; they have different statutes; they are administered with different effectiveness in the different States.

I will confess that I am skeptical that the infusion of millions of dollars of Federal money each year in perpetuity is going to produce substantial and significant improvements in the State authorization elements. I think they do need to be improved. I think that's a State responsibility. And I think the Federal Government can provide incentives to the States to do so without funding the whole process.

Similarly, I believe that the accreditation activities which are provided by private nongovernmental associations which receive no tax moneys whatsoever can also be improved. These are peer review processes. As peer reviews processes, they draw upon an enormous reservoir of qualified experts to provide an expertise that is essentially unavailable at any price. This is donated service by them and it is provided free of charge for the benefit of higher education and its students. And the public disclosure of the accredited status is what is utilized by the Federal Government as a component of its eligibility procedures.

The accreditation process can be strengthened, particularly as has been pointed out here, with respect to the exchange of information among the components—the Federal Government, the States and the accrediting bodies. The Federal Government could provide a substantial benefit to both the States and the accrediting bodies by serving in an information exchange capacity. It is the one element that is common in the whole eligibility procedure.

The accrediting bodies, the States, the Federal Government complement one another, not simply because two of them are governmental and one is nongovernmental, but because the accrediting bodies, unlike the States, stretch across State boundaries. They tend to be freer of the internal political arguments that occur within States and which, in fact, do affect State authorization statutes and procedures.

The Federal Government, on the other hand, in prohibited constitutionally from dealing with questions of faculty qualifications, curricular content, graduation requirements and other educational matters. These must be dealt with by the accrediting bodies and the States.

The Federal Government has its own responsibilities and, as the administrator of the Federal financial aid programs, needs to strengthen its own activities. That's been documented in other places, and I will not repeat them here.

I do, however want to emphasize that this triad—the States, the accrediting bodies and the Federal Government—represent complementary activities. They complete one another. They need to work in concert, and all three of them need to be improved at the present time.

I also want to point out that there are systemic problems in the present student financial aid programs that can be improved and that Congress needs to address. One of these is the fact that the Federal guaranteed student loan programs make available a very large amount of money, which has encouraged unfortunate and uncontrolled, in some cases, increases in size among educational institution.

In my testimony I suggest that the amount of Federal loan monies available to students in a given institution might well be limited, based upon past experience, simply to control this unnecessary or unwarranted increase in size among a single institution.

I also suggest that the Federal eligibility process could be strengthened on the Federal Government side by requiring not only State licensure and accreditation, but by also insisting that an eligible institution have public representatives on its governing board so that there is an outside look at the activities of the institution at the highest level, and also that the institution provide regularly an annual certified external audit of its financial activities. These two requirements would strengthen the eligibility process, and I think would do a great deal to deal with the most potent abuses that have been uncovered.

Mr. Chairman, members of the subcommittee, I would, of course, be happy to answer questions and provide additional documentation if that is desired. Thank you for the honor of being with you.

[The prepared statement of Dr. Thurston E. Manning follows:]

WRITTEN TESTIMONY

Presented to the

SUBCOMMITTEE ON POSTSECONDARY EDUCATION

of the

Committee on Education and Labor
U. S. House of Representatives

by

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May 30, 1991

Representative Ford and Members of the Subcommittee:

My name is Thurston E. Manning. I am President of the Council on Postsecondary Accreditation, commonly called by its acronym, COPA. COPA is a not-for-profit organization whose members are accrediting organizations that meet COPA's criteria for recognition and join together in support of professional activities. COPA's members also include several of the national organizations of postsecondary education. COPA, a non-governmental organization, is supported financially by annual dues from its member organizations. COPA is governed by a nineteen person Board of Directors, some members elected by its member organizations and some by the Board itself. Three of the Board must be persons representative of the public.

Not all accrediting organizations are members of COPA. Some have not sought membership. Some have inquired about membership and have concluded that they did not wish to meet the provisions for recognition. However, COPA members include most of the active accrediting bodies, including all of the regional commissions which accredit the majority of public and independent colleges and universities, several of the accrediting bodies that deal principally with for-profit schools, and some forty of the accrediting bodies that accredit programs rather than institutions.

In addition to my experience with COPA, for twelve years before coming to COPA I was the executive of the North Central Commission on Institutions of Higher Education, which accredits some 900 colleges and universities in a nineteen state region centered in the midwest.

The Subcommittee has asked that I address the issue of integrity in the Federal student financial assistance programs. The integrity of these programs rests on many pillars, including the integrity of the student recipients, of the institutions they attend, and of the financial institutions that make Federally guaranteed loans to students, among others. It also rests on the three agents that together provide initial access to the various programs. Several years ago these three agents were dubbed the "triad," a term which is useful, but which does not denote any organization or formal connection among the parts.

The three agents constituting the triad are the states, which grant the legal authority for an educational institution to operate and confer degrees; the accrediting bodies, which grant accreditation to the institutions; and the Federal government -- in particular the Department of Education -- which by formal action grants eligibility to institutions to participate in programs of federal student financial assistance and subsequently certifies institutions as qualified to participate in specific programs.

The accrediting bodies differ sharply from both the states and the Federal government. Accrediting bodies are private, non-governmental organizations. The accrediting bodies that accredit institutions (as opposed to educational programs) are organized as not-for-profit corporations. Accrediting bodies receive no tax monies for their operations and activities. As non-governmental organizations, they have no legal powers to enforce disclosure of information or to punish transgressing institutions. Their sanctions are limited to moral suasion, public disclosure and, of course, ultimately the withdrawal of accreditation.

The process of accreditation has developed over the some ninety years since accreditation began. Yet its fundamental characteristic has remained constant. That characteristic is peer review. Those establishing the standards for the accrediting decision, those gathering and interpreting information bearing on whether an institution or program conforms to those standards, those making the decision, all are drawn from the universe of accredited institutions and programs. This process thus shares the advantages and drawbacks of all peer review.

Foremost among the advantages is the undoubted expertise of the participants: only within the accredited institutions is there a sufficient supply of persons made competent by experience to judge the quality of educational institutions. Accreditation has also developed as an activity regarded within education as a professional responsibility; as a result those who participate do so with little or no personal monetary gain. Each year thousands of professionals from our educational institutions devote hundreds of thousands of hours to the accrediting process. To provide this rich resource through governmental means would require the expenditure of millions of dollars annually -- if indeed it could be provided at all.

This supply of professional expertise is essential to the accrediting process because its accrediting decision is, at bottom, a professional judgment. As a professional judgment it requires among those who make it undoubted professional expertise. This is obviously true when the criteria for accreditation are general. But it is also true when accrediting standards are apparently simple and specific -- for the formulation and adoption of such standards is itself an exercise of professional judgment. In dealing with a organization as complex as an educational institution or program, with so many interdependent parts, it is simply not possible to identify a few numeric measures that make a simple summary and permit a rapid and easy judgment to be made by anyone. An educational institution or program is not simply a collection of parts each to be evaluated by simple numbers; its successful operation lies as much in the interactions among its parts as in their individual quality. The proper judgment of institutional or program quality needs to be a holistic judgment. That judgment can be made only by those with expertise in the field. Thus the ability of the accrediting organizations to have access to such expertise is an important consequence of accreditation as peer review.

Peer review also has its drawbacks. It can be a lengthy procedure because accrediting activities are not the full time obligation of most of the participants. It must therefore be fitted in among other obligations, a process that usually requires much advance notice and often multiple tries to recruit the desired membership of a visiting team or committee. Accrediting organizations have sought to deal with such problems by having small, full time staffs charged with the management of the process -- but not with the accrediting decisions. Peers have multiple interactions with one another, and peer review must guard against being corrupted by cronyism. Accrediting organizations have sought to deal with such problems by establishing strict rules to guard against conflicts of interest in the process, and by incorporating public representatives into the decision process without diluting the expertise necessary to a defensible decision.

In outline, the accrediting process is simple. A central body of professionals and public members (usually called a commission) establishes the criteria to be met by an institution or program. Often the criteria are voted on and so accepted by the institutions or programs affected. The managers of the process (the commission staff) recruit and train persons from the institutions and programs to serve as site visitors, and assign them to the teams. The institutions or programs being evaluated are required to conduct a self-evaluation, using the accrediting criteria as guides. The self-evaluation is documented, usually very extensively, and the document, along with such public materials as the institution's catalog, serves as a basis for a visit by the commission's visiting team. The team seeks to validate the information in the self-evaluation document and to gather other information useful in reaching the accrediting decision. Its members meet with students, faculty members, governing board members, administrators and often graduates. Following the visit the team prepares a written report on its findings. The report is then reviewed, the institution or program under examination always being given opportunity to comment on it. Finally the reports and comments come to the commission which considers the evidence before it and makes the accrediting decision. That decision may be appealed to another body if it is adverse to the institution or program.

The accredited institution or program is subject to additional scrutiny. There are periodic full evaluations for reaffirmation of accreditation; the period varying with the patterns of the several accrediting bodies, but usually several years in length. Accrediting commissions require accredited institutions and programs to provide periodic reports, commonly annually. These allow the commission to become aware of changes that may affect the accredited status, and so advance the time for a full evaluation. Accrediting commissions respond to complaints about their accredited institution and programs, and the pattern of such complaints may also suggest advancing the time for a full evaluation. It is common practice among the commissions which accredit institutions to have interim team visits focused on particular problems or issues; the findings of such visits become part of the information for the next full evaluations as well as affecting the timing of that full evaluation.

The accrediting process, just outlined, is clearly a complex one. It complements the processes appropriate to the other two components of the triad. A state, as an authorizing agent, must employ standards for authorization that can be applied to institutions just being established as well as those already in operation, since without state authorization an institution cannot operate legally. In contrast, accreditation is not granted to an institution until it has been in successful operation for a period of time. A state is influenced by local conditions. The accrediting bodies deal with institutions in several states, and are much less subject to the pull and tug of local interests. A state is a major operator of colleges and universities, and has invested millions of tax dollars in their development and operation. An accrediting body deals with both public and independent institutions, and has no interest in furthering one institution over another. None of this is said to denigrate state activity in authorizing institutions. On the contrary, I believe that the states should take a more vigorous role than they have as authorizing agents, for one of the current deficiencies in guarding the integrity of the federal student financial assistance programs are inadequacies in the authorization statutes and operations in many states. The essential point, however, is that state authorization and private accreditation are complementary. Both need to work well.

Similarly the third component of the triad, the Federal government, complements the other two. Constitutionally prohibited from imposing educational standards on institutions or programs, the Federal government must look to its triad partners to deal with educational issues. But as an important provider of funds to students, the Federal government has responsibilities in monitoring whether those funds are properly administered. Like the states, but unlike the accrediting bodies, the Federal government has available to it legally enforceable sanctions. Like the accrediting bodies, but unlike the states, the Federal government's interests span more than one state. It is clear that the components of the triad, the states, the accrediting bodies and the Federal government, have complementing powers and interests.

Experience also shows that the triad has been less successful in recent years than it would like to be. Rising defaults in Federally insured student loans are a symptom of difficulties in the integrity of the Federal student assistance programs. Where are the problems, and what might be done to deal with them?

We must be careful to recognize that the causes of student loan defaults are complex and not as obvious as some analysts with axes to grind would like to think. Thus we hear that high default rates are tied to low graduation rates and low placement rates; the plausible reason is that those who do not graduate or who do not find jobs cannot repay loans. Yet a recent study of schools of cosmetology found no correlation between guaranteed student loan defaults and graduation rate or placement rate. While we badly need careful, comprehensive and quantitative studies, there is an abundance of anecdotal evidence supporting the idea that the reasons for high default rates are complex. For example, one California school, accredited by one of the regional commissions, has a high reputation, a clean bill of health from the accrediting commission, and a high default rate. It is a school of dramatic arts, and it is not unreasonable to suppose that the high default rate is more a reflection of the uncertainty and low income of beginners in the theater than it is of the school's educational quality.

We should also be careful not to be so overwhelmed by the chronic cries of problems with the student assistance programs that we overlook their great success. While we would all wish to have a lower default rate for guaranteed student loans, the fact is that the amount paid by the federal government for defaulted loans is much, much less than the total dollars loaned. The Federal guarantees have opened billions of dollars of private capital that has gone to provide education for millions of Americans. No other federal program of support for postsecondary education has made available anything like the dollars made possible by the guaranteed student loan program.

Yet we recognize that the programs could be made much better than they are. Here are some suggestions for improvement:

1. The institutional authorization work of the states is a hodgepodge. Some states have reasonably good authorization statutes, others have poor or, in some cases, none. Few, if any, states have invested enough in the administration and enforcement of the statutes they have to provide a minimal level of public protection against poor practice. Substantial improvement of state authorization statutes and state enforcement would be beneficial in improving the quality of educational institutions.

   The federal government cannot do the work of the states, and, in my view, should not finance the work of the states (as some have proposed). It is appropriate, however, for the Federal government to encourage state action. I suggest that the Higher Education Act make provision for preferential treatment to schools and students in those states which have authorization statutes and enforcement of them that meet at least minimal criteria to be established by the Secretary of Education.

   Such preferential treatment might include exemption from site visits conducted by the Department of Education at school expense as part of the federal certification for program participation. It might also include an additional component of Federal interest subsidy on guaranteed loans. The first would benefit the schools, the second would benefit the students. Both forms of preferential treatment would give incentive to a state to beef up its authorization statutes and administration for the benefit of its citizens.

2. The Federal government should improve the level and quality of its scrutiny of institutions participating in Federal student assistance programs. The staffing of the Department of Education dropped from about 8,000 persons to something over 4,000 during the past eight years. The department is understaffed -- as the reports of its Inspector General document. It needs to have a staff of sufficient size to carry out its oversight responsibilities.

   The Department also needs to pay more attention to its responsibilities. Only the Department can limit, suspend or terminate an institution from participation in the student assistance programs. Yet it was years after it received authority to take such actions before it took the first one. There are signs that the Executive Branch is finally reconciled to having a Department of Education and will see that it does what it is supposed to do. But it needs the stimulation of Congressional oversight to make sure that it administers as it should. It is unnecessary here to repeat the many specific suggestions already in the record.

   The Department could easily improve the eligibility process which is the concern of the triad. In addition to the current requirements of state authorization and accreditation, the Department should require for eligibility that the school have representation of the public on its governing board and make externally audited annual financial statements publicly available. Such requirements would not be excessively burdensome to schools, but they would discourage those tempted to abuse Federal financial aid programs.

3. Finally, there is much that accrediting organizations can do to improve their actions. They need to increase the speed with which they obtain monitoring information from their accredited institutions and act upon it. Among the data elements that should be monitored as a matter of routine are admissions numbers and rates of acceptance and enrollment; placement rates for vocational programs; volume of student financial aid and sources of such aid. No one of these elements by itself, or even all taken together, will identify a problem school -- but rapid and unexplained changes should be a trigger for professional examination to identify causes of the changes.

   To do this means utilizing current technology. That costs money -- always in short supply in largely volunteer organizations -- but it must be found. The federal government could assist through pilot programs that establish procedures and demonstrate feasibility. COPA several years ago developed a computer compatible data element dictionary. It has yet to see use in data accumulation and sharing because the small staffs of the accrediting organizations have not had time to develop the common forms and data collection techniques.

   The accrediting organizations also need to improve information sharing -- and for that matter, information sharing among the components of the triad would be helpful in better informing each partner. The Department of

Education, the one common partner for every institution participating in Federal student assistance programs, could establish a central information sharing office to which the states and accrediting bodies could forward information and from which that information would flow to the appropriate states and accrediting bodies.

It is important to recognize that the accrediting bodies cannot monitor the Federal programs. Their visiting teams are composed of peers, not trained accountants skilled at the details of administration of student assistance programs. They are focused on educational quality, not on financial assistance. Nor can they serve in place of state authorizing personnel. They are not knowledgeable of state statutes and regulations, and they do not have the legal authority to demand documents.

Let me make some specific suggestions for the Higher Education Act:

First, the language making accreditation one of the components of the Federal eligibility process should be retained. As discussed above, accreditation serves a purpose that neither the states nor the federal government can serve. Its role should be retained.

Second, the language in place requiring the Secretary of Education to maintain a list of accrediting bodies regarded as "reliable authority as to the quality of education or training in the institutions or programs they accredit" should also be retained. Accrediting bodies are non-governmental; they are not franchised nor regulated. For the Federal government to rely on accreditation it must be able to pick and choose those accrediting bodies it finds to be reliable for its purposes. Language should be maintained to speaking only to educational quality; accrediting bodies are not organized nor staffed to monitor the details of Federal programs, and they should not be expected to do what they cannot do well.

Third, some of the systemic problems of the Federal guaranteed student loan programs should be addressed. No increase in policing or regulation can eliminate fraud and abuse, and increases in policing can increase harassment of the innocent. We need to make the institutions active participants in the program, not merely passive observers as they are now (passive observers, I must add, who are often blamed for the disfunction of the programs). Here are some possibilities:

a. We know that rapid expansion of institutional size because of easy availability of student loan funds leads to problems. In some cases the institution simply outgrows the managerial abilities of its officers. In other cases there have been attempts to use the availability of student loans to "make a killing." A possible solution: limit availability of the total loan dollars made to students in a school to that used in the previous year plus some reasonable increase (say 10%), which could be adjusted by the Department of Education in cases of individual school need. This would permit reasonable growth in a school while discouraging or making impossible the uncontrolled growth that has led to abuse.

b. Enroll schools as partners in guaranteeing the loans. Not all schools will have the financial capability to share the Federal role as guarantor. But those who wish to participate as guarantors (say of the first 5% of dollars loaned) could be encouraged to do so either by more favorable interest rates to their students or by having available larger amounts of loan funds available.

The Federal student assistance programs have had a substantial and unprecedented salutary effect on the educational level of our people. They should be continued. The triad of state, accrediting body and Department of Education should be continued as the initial eligibility mechanism. All three components need to improve their performance -- but what is needed is improvement, not replacement. The triad has served us for almost forty years. The vast majority of the 8,000 institutions participating in the Federal student assistance programs perform well. We need to aim at doing better, not at doing differently.

END

Mr. **Hayes**. Thank you. I have only one question that I'd like to pose, maybe, to the entire panel. I, too, would like to rid ourselves of a whole system of institutions which are not providing quality education. I, too, would want to protect those students that have been victimized by such institutions.

However, I fear that an overly punitive approach could, in fact, impact negatively on access to many students, particularly minority students that are concentrated in populations at certain types of institutions, such as proprietary schools.

Could anyone on this panel respond to my feelings, my reservations? Do you think credence should be given to it?

Mr. **Manning**. Mr. Hayes, since I went last with the testimony, let me go first with the question.

The problem that you have posed is an extremely difficult one. It is very difficult to consider any kinds of restrictions, stipulations, reductions or more vigorous enforcement that does not in some way reduce access to higher education.

We have not been very successful in finding any recipes up to the present time. The current arrangements in the statutes that exclude from participation institutions whose default rates are too high—we can argue about what too high is—do, in fact, reduce the access of students to postsecondary education and will cause some difficulties.

I think we have to balance and say we know that if we are going to be more strict in admitting students or admitting institutions to eligibility, we will in some respect reduce access. And we must simply balance the question of reduced access with the question of how much we are willing to pay for providing that access.

Mr. **Hayes**. Mr. Sweeney, you looked as though you wanted to respond. Did you?

Mr. **Sweeney**. Yes, sir. I would agree with Dr. Manning. I think that balance is really what we're striving for. And I guess there's one other word that comes to my mind as well, and it's quality. I think you can have access and ensure opportunity without having to delete or compromise quality. That's where my mind is at this moment.

Mr. **Hayes**. Mr. McCormick.

Mr. **McCormick**. Yes, sir. I agree with the statement of a delicate balance of providing access on the one hand and having integrity on the other. But I think in these days of appropriating $18 plus billion a year to student financial aid, this Congress has the right and the duty to ask the question, "Access to what?"

And it has, I think, the responsibility to give some direction to the answer to that question. When you take students and thrust them into a loan program and for whatever reasons, unfortunate though they may be, they wind up not trained in a productive job that they can make a living at, but yet they wind up as a defaulted borrower, this is what happens to them.

Their IRS income is offset, refunds are offset. Their credit is ruined. And, ultimately, we take that student to court and get a default judgment against him. I don't think that we've provided any access to that student. I think we've irreparably harmed that student. And I think we have to be extremely careful who we allow to be eligible to participate in these programs so that we can have the kind of positive outcomes that Dr. Sweeney refers to. Thank you.

Mr. **Hayes**. You do accept the fact that some of the students who are thrust into loan programs should not have been there in the first place, that they should have been given a grant?

Mr. **McCormick**. Yes, sir. I definitely think we have to maybe be a little more courageous in that area than we have in the past and really address the whole question of the grant/loan imbalance. That's why I recommend—or I agree with the recommendation of the chairman of this committee that we should front load the grants.

Mr. **Hayes**. Dr. Kipp.

Mr. **Kipp**. I agree that there's a very important issue of balance, but I think there's also a certain degree of misunderstanding. I think the question of access to what and how do we assure that it is, in fact, quality education or training is a critical one.

Because I think what we've seen is, in fact, proliferation of would be providers of education and training, including a number of people who are more interested in securing the dollars than providing that training. In too many cases we've seen access to exploitation.

The closing down of particular schools that have abused the program, the limitations in many instances of their eligibility to continue to participate has not affected access for students. There are other institutions that, in fact, are going to do a good job to provide that training and assure those students get the kinds of jobs they deserve.

I think there's been inadequate attention to counseling and to providing sufficient support services and to providing the solid education and training that the students deserve when an institution admits them. It seems to be it's almost a sacred obligation of theirs to deliver for those students.

I had an interesting experience very recently. I spoke at the graduation at a proprietary school, something I had never done before. It's a school, quite frankly, that a year or so ago because of the 1989 Budget Reconciliation Act lost eligibility for the SLS program.

But the school looked at its practices. It looked at the kind of performance. It decided rather than giving up or going out of business to commit more of its resources to providing the kinds of support the students needed, to making sure that its instructional programs were effective. And it's dramatically increased its retention rates. It's had excellent placement rates for those who finished, and my expectation is that that school will again be eligible.

My feeling as well is that the kinds of recommendations that are contained in the NCHELP proposals are recommendations that institutions committed to providing service to low income and disadvantaged students, but committed to providing quality training, can and will meet. And that's what we have to try to make sure we assure.

Mr. **Hayes**. Dr. Longanecker.

Mr. **Longanecker**. Yes, just to build on some of the things that have been said. I think what we need to do is expand opportunity, but the opportunity to succeed, not the opportunity to almost certainly fail, which is what happens today.

So by actually reducing access, that is, to those institutions where students don't succeed, we may provide the right incentives to increase access to the opportunity to succeed. And I think that's the key to what we need to do.

Now, germane to my testimony this morning, I believe the States haven't been as focused on that as they should have been in the licensure of some of the institutions in those States. And that's partly because they haven't really perceived that as their responsibility.

I think that attitude is changing, and we think there are a set of recommendations that would help change that more significantly, and that if we set the right incentives in place.

I think it's also important to keep in mind that higher education, in general, is moving into a new generation of looking at its business and looking more at the outcomes rather than just at the process and the inputs. And so I think, to some extent, this reauthorization needs to, and will, it would appear, start to capture that sense of looking at performance as well as just good intentions.

Mr. **Hayes**. Congressman Coleman.

Mr. **Coleman**. Thank you, Mr. Chairman. Mr. McCormick, you have a lot of recommendations, some of which I agree with, and with some which I have problems. But one in which I am surprised, is a very candid and frank statement which should have set off a lot of alarm bells here today, and had people on that panel, well, some of them, at your neck. And I haven't seen it yet.

And that is, would you please explain about removing the accreditation process for certification in one of your recommendations, number four.

Mr. **McCormick**. Thank you, Mr. Coleman. I frankly feel very strongly that accreditation is exactly that; it's accreditation. It deals with curriculum. It deals with the requirements of a faculty. It speaks to the quality of instruction. It speaks to the purpose, the goals, the missions of an institution, and that is its viable purpose. And that has, historically, in education been the purpose of accreditation.

I don't think accreditation has any role to play in certifying what schools receive Federal funds for what reasons. I think the purpose of the program itself, the Department of Education, should be the one to determine, based on the direction the Congress gives them, the criteria that all schools, whether they be private, public or proprietary, must meet in order to qualify to administer Federal student aid on their campus.

And I think accreditation has a very viable role in the grand scheme of things, but it does not have the responsibility or the role. It's inappropriate, in my opinion, to ask it to be a part of the triad, if you will.

I think the evidence of the last 5 years is very clear; the triad has not worked.

Mr. **Coleman**. Would you have more faith in suggestions that have been made here for State licensing and, perhaps, a more dependent role with some standards developed and requirements made by Federal law? Is that something that you think is stronger and better than the current system?

Mr. **McCormick**. I would be much more supportive of that approach, combined with a very clear direction on the part of the Congress to the Department of Education to exercise, in my view, more authority that they currently have in the current law to certify schools eligible to participate in Title IV.

I think all you have to do is go to the Inspector General's report on the program certification process of the Department of Education and look at the current deficiencies in the way the department exercises that role. And you don't need any new legislation; you just need someone in the department to assert themselves in response to that report.

Mr. **Coleman**. Dr. Manning, what do you think? I know what you think about this, but what he says has some validity to it. Give me your best shot in about a minute and a half, or so.

Mr. **Manning**. Let me try a minute and a half, Mr. Coleman. Accreditation was looked to by the Congress in 1952 because of poor experience with the GI bill of World War II. Fraud and abuse were rampant at that point and the private accreditation system was the only mechanism available to the Congress to do something about providing the kind of eligibility or screening for institutions.

It has served as a component of the eligibility triad for some 40 years. And the success of that triad, while it's had problems in the last 5 years, I think is evident.

The accrediting bodies have never asked to be a part of the triad. They have been eager and willing to serve the public good by making the public designation of accreditation available to the Federal Government for its use in the eligibility process.

If there were a viable alternative, I can suspect—we've not conducted a canvas so I don't know—I suspect that a great many of the accrediting organizations would say we are primarily a voluntary nongovernmental activity and we will proceed along the lines that we have historically proceeded.

At the moment, we do not see a viable alternative. The States, I think, are simply not going to do it. You have 52 plus jurisdictions, and to suppose that are all suddenly, after years and years of doing nothing, they're going to leap forward and come ahead. I think it's just unrealistic.

I think accreditation is a useful and important competent and should be retained.

Mr. **Coleman**. If we were to spell out, say, ten factors that the accreditation process had to cover, and some of them would be new ground for you to cover, specifically dealing with educational loans and grants and so forth, financial aid—would you do it?

Mr. **Manning**. My advice—and I should say I'm retiring shortly—my advice to the accrediting organizations would be no. I do not think they are qualified to deal with that. They are a peer review process. The people who serve on their teams, who serve on their commissions, who serve on their review processes, are not qualified to deal with the details of Federal programs.

Mr. **Coleman**. Well, that's a pretty firm statement. And let me say—and I know you're leaving but I do want to have the record show that I believe that since we are dependent upon the accreditation agencies to the extent that we are, one of the real threshold questions is why they haven't adapted more and pursued efforts to deal more in this area.

And I'm beginning to think Mr. McCormick's suggestions, and the others here, have more relevance to this process than what the accreditation agencies want to reveal or have said in the past. I think a key part—and it's so important, perhaps the most important thing we can do, is to certify a school or not. And if they're certified for the wrong reasons, then that's where I think the problem has come about.

And this is one of the things I want to be sure we can do something about this year.

Now, the guys from the States. Why do you need any Federal monies to do any of these things? Are you asking for Federal money, Dr. Longanecker?

Mr. LONGANECKER. Yes.

Mr. COLEMAN. Why do you need our money for this?

Mr. LONGANECKER. I think, in part, you can see the advantage that Federal funding provides through the VA approval process, that Federal funding there has allowed that process to develop to a robust enough level that it can provide the kind of oversight that's necessary.

Many of us put substantial resources into this activity in the States, but that varies substantially from State to State. What we are proposing is a level of funding that wouldn't—well, depending on whose proposal you take—that would help but not necessarily supplant what the States are doing today but would allow us to do a much more rigorous effort in that regulation.

And we think that it's a justified request because we are, in fact, proposing to do this as a partnership with the Federal programs, for the administration of the Federal programs.

Mr. COLEMAN. Dr. Kipp, do you have a different opinion?

Mr. KIPP. Yes. Speaking on the basis of California's experience and what we've done in the last couple years, we didn't ask for any Federal money when we passed new legislation abolishing the old State licensure agency as ineffectual and creating a new commission that was less controlled by the industry to enforce tougher financial administrative and consumer protection requirements. It's not going to be financed with Federal funds.

And, certainly, I think it's possible to have a dramatic strengthening of the State oversight and licensure process as it relates to student aid and, more importantly, to adequately protecting students as consumers without asking for Federal funds to finance it.

Mr. COLEMAN. Now, the administration has proposed that the States play some sort of risk-sharing role. They recommend that States with 20 percent or above default rates for their borrowers would share in the risks.

Are you familiar with that proposal?

Mr. KIPP. Yes.

Mr. COLEMAN. Then you have a direct stake in the process. Even more so because you have monies to lose.

But my two-part question: One, where would the funds come from in your State, or where do you think they would come from in most States, to pay for these defaults that the Federal Government wants the States to become involved in? Would you answer that first? Where do you think the money is going to come from?

Mr. KIPP. Coming from a State that's faced with a $14.3 billion deficit in the current year, I don't think it's going to come from any visible source. We don't happen to be a State that has a default rate over 20 percent, but I think that proposal, frankly, is misguided and misdirected.

As long as States are limited in terms of dealing with the issue of institutional eligibility to impose a no condition or requirement that's more stringent than that which the Secretary of Education requires, the States are in no position to be able to tighten down eligibility and control defaults in that manner.

We've had to go to different techniques and different approaches. And I think the solution is in the licensure area and elsewhere; it isn't in the State risk-sharing.

Mr. COLEMAN. Dr. Longanecker.

Mr. LONGANECKER. Yes. Speaking now for myself as a SHEEO, rather than for the organization, I believe that in Colorado in terms of public institutions that they are above that level we would probably go to the—it would be a combination of publicly appropriated dollars, probably a reduction in other student financial aid programs and a combination of some expectation from the institution.

For those private institutions, we would probably try to recapture those dollars from that industry.

Mr. COLEMAN. From the student?

Mr. LONGANECKER. That's correct.

Mr. COLEMAN. A loan origination fee or guaranteed fee or something similar?

Mr. LONGANECKER. Something along those lines.

Mr. COLEMAN. Students would pay for it?

Mr. LONGANECKER. I think that given the economic circumstances of States, that's the likely approach they would take.

Mr. COLEMAN. So what incentive does this plan afford to keep the default rate down if the costs are just passed on to the families of the students?

Mr. LONGANECKER. I think there are ways. You asked me to respond to the adminstration's proposal. I think there are ways to develop true financial partnerships with the State. I think the States would be more likely to accept that partnership if they also had some discretion or authority in determining whether that financial was likely or not to occur.

It's very difficult for a State, I think, to accept an obligation over which it has no control whether that obligation is going to be incurred or not. And that's one of the dilemmas you have in the program today or with, I think, the adminstration's proposal.

Mr. COLEMAN. Finally, Mr. Chairman, is there a model code out there for licensure and so forth? And is it any good, or is it written by the industries? We know that we're concerned about it. What if we were to create or work with someone on a model which had teeth?

Is that something that's could solve the problems?

Mr. LONGANECKER. If I might address that. SHEEO is presently working on a study which will be completed this summer which is intended to provide a set of national standards. And, in fact, embedded in the legislation we proposed are about nine areas for national standards that we think, if adopted, could substantially improve the overall regulation.

We don't think there's a single model because there are various cultures in this country. And so we think different States need to develop different approaches to it. But we do think that there are a set of standards, national standards, that would be legitimate to apply to all States.

Mr. COLEMAN. Other comments there?

Mr. KIPP. Congressman Coleman, if I might. I think a number of the NCHELP recommendations focus on that issue. And, again, speaking personally I know that in the case of the California Student Aid Commission we have submitted at the chairman and your request as a part of our proposal for reauthorization specific language in the three column format you suggested that deals precisely with the details. It's a very detailed proposal on what we believe would be model minimum State licensure requirements that could provide the kind of protection and integrity we're all seeking.

Mr. MANNING. To respond directly to your question, Mr. Coleman, in 1973 the Education Commission of States developed a model statute for authorizing postsecondary educational institutions. There's been a model statute in existence for almost 20 years, but it has not been used much.

Mr. COLEMAN. Thank you, Mr. Chairman.

Chairman FORD. Mr. Manning, you mentioned the upheaval that was rampant across the country because of the fly by night back alley garage that suddenly overnight became an automobile repair shop. I came out of law school in 1951 and was one of the veterans who resented the fact that somebody was stealing this money that we had discovered was the most important thing in the world because it was paying for our college.

There was another kind of fly by night idea that I remember. And what everybody takes for granted today. It is air conditioning. It didn't really exist for the great unwashed public in this country until after World War II.

When I was in Colorado what was originally called air conditioning was really a block of ice in a box with a fan blowing over it. And then somebody came up with a marvelous idea that you could use a compressor and run air through a radiation type device and cool it instead of hauling the ice in and draining the water out.

Before this time it was called refrigeration, but hadn't been applied in that way. And suddenly everybody who knew anything about it had an air conditioning school. I suspect that some people who went to those air conditioning schools got jobs because nobody knew a good air conditioning job from a bad air conditioning job. Nobody ever had an air conditioning job before and nobody knew, even after air conditioning was installed in our house, whether it was good or bad unless it wasn't as good as your bother-in-law's.

There was great anxiety from out in the higher education community that the GI bill was wrong; it shouldn't have been paying for things like that. And then we found out that some of our friends had gone to Paris and were studying art on the West Bank, and that sounded good. Then we found out that some of our friends were taking flying lessons in Piper Cubs with no real commercial value involved, but it kept them busy.

When I got here in 1964, I found out that this place was broiling with anger. It remained from the period of the much publicized abuses of the GI bill, not only in the so-called trade schools and fly by nights, but the kinds of things that people were going to college for. It irritated people that a veteran was studying pre-Columbian art, for example, at the university with the GI bill.

But from that time on, I've seen over and over again people with ideas about how we magically decide what is and what is not a good school. And I was very interested when I came back to hear your response that you don't know how to define that either and you wouldn't recommend that your voluntary agencies try to do it.

During the Carter adminstration when we did the reauthorization in 1979 and 1980, the Carter Administration was intent upon the fact that we had to have some kind of new government involvement in accreditation. Mr. Coleman's predecessor and I set out cooperatively to try to accommodate that concern and try to draft something.

In a relatively short time, we had our head handed to us in respective baskets by the education community, who said, "You can't do this to us because we have always voluntarily submitted to accreditation agencies, the membership in which is voluntary and the benefits and penalties thereof are voluntary."

So you're going to replace government dictate for voluntary action. Now, if you would compare the sensitivity of the Carter people, who ducked and ran as soon as we tried to do it, with an adminstration that talks about a thousand points of light and volunteer everything. The Family Medical Leave is a bad bill not because the idea isn't good but because it mandates that somebody does something.

Now, does anybody at that table suppose that when the Carter adminstration ducked and ran the last time we tried to talk about the Department of Education, then the Department of HEW, writing regulations for accreditation, that this administration, the champions of volunteerism, are going to replace these volunteer accreditation agencies with a government mandate?

Does anybody really believe that we would be doing anything except wasting our time if we went in that direction? How would any of you who suggest that we ought to be doing something suggest we approach the problem without having a tremendous eruption that causes everybody to run politically on it?

Mr. LONGANECKER. There's some danger in jumping into this one, but I will do so. I think this is an area where there may be a good case for some redundancy. I'm not one to propose that the accreditation process should be—that the triad should necessarily be disbanded.

What I would suggest is that one of those partners be substantially enhanced, not only in what it can do but what it should be clearly expected to do. Today, what it says is, "License this institution." That's what the partnership is. But was licensure means is left entirely to the State to define.

What we're suggesting is that the Federal Government and the department make much more explicitly what their expectations of licensure are and that yes, indeed, there be some redundancy between——

Chairman **Ford**. In the State of Colorado, what kind of schools could you get away with having a State license for? Could you license the University of Denver, which I attended?

Mr. **Longanecker**. We could. In fact, we regulate them today in a very modest way. Actually, when I was in Minnesota, we had a much more significant regulation of the private sector and a much more significant private sector. And that was generally supported by the private sector of higher education.

Chairman **Ford**. What kind of things do you regulate?

Mr. **Longanecker**. In Colorado we have very modest regulation of the private colleges. In Minnesota, on the other had, we did almost everything that is identified on page five of the proposal that's before you. We looked at financial and administrative capacity. We looked at facilities, equipment and supplies. We looked at the faculty qualifications. We looked at curriculum. We looked at admissions and advertising criteria. We required that they participate fully in the State's data collection efforts and maintaining of student records. It was a fairly substantial involvement with, indeed, some overlap with the accrediting process. But we never envisioned that that was a replacement for or an alternative to the accrediting process which served, we though, a distinctly different set of purposes.

Chairman **Ford**. Well, I have a law degree from there, my son has a law degree from there, and my daughter-in-law has a law degree from there. Where in your list of A through I would I find anything if I was considering sending a grandson back to that school that would tell me a damn thing about whether it produces a good law education?

Mr. **Longanecker**. In Colorado you would not.

Chairman **Ford**. Now, that's part of the problem here. It seems that we quickly accept the idea that there are some kinds of schools that you can measure the people coming out of and decide whether the school is a good school on the product it turns out.

My own experience as a lawyer since I took the bar in 1951 is that two-thirds, at the maximum, of the people who take the bar examination in my State for the first time pass it. If the beauty schools in Michigan only passed two-thirds of the people who take the State beautician's license examination each year, we would be condemning the devil out of them as not giving people their money's worth.

But everybody accepts the fact that fully one-third of the successful graduates ranging from Harvard to Michigan to Stanford and you name it don't make it the first time around in Michigan. That's not atypical; that's fairly typical across the country. They accept that as evidence of the fact that we've got fine, rigid regulations that keep the unfit out of the practice of law.

But they never question the fact that a law school turns out a definite number of licensed attorneys. I might say that the school I went to was superior to the University of Michigan law school—which I couldn't get into when I was ready to go to school—because I had two friends who took the bar with me, both of whom had grades far superior to my grade point average in law school, and failed the first time and I passed the first time.

Now, it bothers me when we try to oversimplify these things and say that there's any yardstick by which you can decide when an educational institution is educating somebody. Now, clearly, training a one-legged person to be a truck driver is outrageous or trying to train an illiterate person to be a computer operator is outrageous. Those are the anecdotal kinds of things that get us all excited.

But what would you do about the fact that recent averages show that it takes 6 years to get a 4 year degree in this country for most people who go to 4 year colleges? Whose fault is that? And who is getting their money's worth and who is not?

We're close to the point where a majority of people do not finish a 4 year degree in 4 years. That's close to the reality of the whole system.

But when we look down at certain types of schools it seems easier to select out, like Mr. Sweeney was doing. I'd like to observe to you, Mr. Sweeney, that I had a great deal of respect for all the tightening that the Veterans Administration did on these fly by nights until I experienced, again during the Carter Adminstration, something called weekend college for automobile workers who were veterans of the Vietnam war. They would go to school on Saturday and Sunday, continue working in a factory all during the week and work toward a degree on weekends.

Lo and behold, the Veterans Administration with its rigid little yardstick looked at the number of hours that they sat in a seat and said this doesn't qualify as college training and disqualified all these Vietnam veterans at Wayne University in Detroit, some 12,000 at one time, a program that every educator thought was a great success.

And we never were able to get enough muscle on the VA to change those rules to permit the continuance of the weekend college, not only there but in other parts of the country. And the result was that the pig-headed bureaucratic approach that they take over there in defining with absolute certainty what is and what is not adequate educational time stood in the way of any kind of innovation.

I tell you all of this because I am getting more and more frustrated with everybody coming in here and saying you've got to try something new. I've been trying something new for years here; eighteen things we have done since the last reauthorization to tighten up on fraud and abuse and mismanagement in student loans alone. And the department was here yesterday.

Mr. McCormick, it's always refreshing to have you because you and I agree so often. You point out here that the data bank that we authorized way back in 1985 isn't on line. Yesterday, the GAO told us that they finally have decided over there that they need a data bank because they can't answer our questions, they can't answer your questions, they can't answer any questions about what's going on in these programs.

We authorized it in the last reauthorization 5 years ago. They started working on it last year, and the GAO has been assured by the department that by late 1993 it will be up and running, which means that sometime in 1994 we'll be able to ask questions and get answers.

I sent to the department this morning those 18 changes that we made and asked them what was done about them, if anything, what is being done now, and what they intended to do in the future. And I know already what some of the answers are, and the answer is nothing.

And I now have the feeling that we've been sitting here like a legislature passing drunk driving laws only to be told that the cops don't like to arrest anybody for driving while they're drinking. All kinds of changes in law, and yet they are up here, like everybody else who's here, "Make some more changes in the law."

Mr. McCormick points out in his statement very clearly without, attacking the department that that's really where our problem is.

We'll be back in just a minute.

[Recess.]

Mrs. LOWEY. [presiding] Gentlemen, I'd like to begin with Mr. David Longanecker. I was particularly interested in your proposal with regard to improving State licensure and State oversight of educational institution participation in the student aid programs. In fact, you made several important points.

First, that it's important that responsibility be close to the problem. Number two, you wanted to be sure that you see major responsibility for oversight in the hands of the governmental body that is responsible to the public. Number three, this basic scheme has been tried successfully with the VA educational programs.

However, if I recall, Mr. Manning made a statement that the State governments are not exactly going to leap into assuming responsibilities for these programs. So that I wish you would make clearer for us why this particular plan will provide the strong leadership, why it will provide strong oversight, and why it will have an impact on aiding us and getting rid of all the fraud in this program.

Essentially, I'd like to know why you think this plan will succeed.

Mr. LONGANECKER. Thank you for the question. I think Mr. Manning has raised a very legitimate concern, but I think there's a good response to it as well. Why would we trust the States given their one partner—and I've indicated in my testimony that the States haven't done their job to this point, so why would I suggest you trust them.

Mrs. LOWEY. Some States.

Mr. LONGANECKER. Yes. Trust us. I'm from a State: Trust us and we'll work with you kind of thing. I think there are a variety of reasons, some of which you mentioned. But there are a couple of others that I think are key to this. You've mentioned that the States are governmental agency and they are closer to the source of the provision of educational services. I think that gives us a distinct advantage over the Federal Government as the principal partner.

One of the dilemmas we have with the triad today is it's very easy for us to point fingers at all three of the actors. And so we say the problem was accreditation or lack administration at the Department of Education. The Department of Education say it's those damn States and the accrediting people. The accrediting people say the States should have been better about their licensing, if only the Federal Government is really interested.

What we're sort of suggesting is maintaining this partnership but having a captain of the team, if you will, with the States having much more clear requirements and expectations. That's the other reason I think it would work.

What we're suggesting is that the Federal Government through legislation make it more clear what they expect of us, what standards they expect us to uphold. And we've listed nine that we think are important ones. Not tell us exactly what we have to do. We don't think that would be helpful. But to give us standards which we would have to develop State guidelines then to respond to. And we think that would be one help.

The other one, and I think it is important, is that we have proposed that there be some financial assistance from the Federal Government to do this. We think we would benefit from this, certainly, because we would have a stronger standards and a better set of institutions operating within our States.

But we also think there's substantial benefit to the Federal Government and so there should be a partnership in the financing of that. And we also would be candid in saying that the finances would provide a stronger incentive for all of us to partnership on this, rather than some of us.

I think the other is that there is a new enlightenment, if you will, in the States. Many of the States—California, New York, Colorado, Tennessee, and a number of others—are becoming much more serious in accepting this responsibility and to looking forward to it.

So there's some momentum upon which we think the Federal Government could build. Is that responsive?

Mrs. **Lowey**. Yes. And I wonder if you can elaborate further. You talked about flexibility for the States to let them develop their own plans. I wonder if you can elaborate on what should be the Federal responsibilities. And how would you see States differing? What would be the basic elements?

Mr. **Longanecker**. Well, we think it's important for the Federal Government to set the standards, the general areas in which we would need to set regulations, and to have then some oversight to see if we were serious about it in bringing what we brought back.

So we propose that the Secretary would have the authority to approve or disapprove the plans that we brought forth. But we think it is important for the States to develop their own criteria. The State of Colorado, a basically rural State with three and a half million people is a very different State than California or New York. And what is going to work for us in a much smaller environment is not going to necessarily be the ideal plan for a State with 30 million people or however many there are in New York.

So I think it's very important to allow States which have the responsibility, the primary responsibility constitutionally, for oversight of educational services, the delivery of that, to fashion something that fits for them but also fits within a national framework.

Mrs. **Lowey**. I wonder if you or any of the panel members would care to elaborate on the specific functions of the States. What role do you see the States performing given the fact that there will be some differences between States? Perhaps you would like to comment further. What specific functions, what is the role you see them performing? And I'm sure there are certainly differences, and we should respect that, between the large States and the small States.

Mr. LONGANECKER. I think in some States, for example, in Colorado, the function would probably be provided almost exclusively by one agency or a set of activities under the jurisdiction of one broader agency. In our State, that's the Department of Higher Education. And currently, virtually all of postsecondary education is regulated and monitored and encouraged to improve under the rubric of that organization.

In another State there might be more agencies or more entities involved, but we think still there needs to be one entity that is designated by the Federal Government and held accountable for delivering on this if the State is unwilling to do that in the entire array of postsecondary education. Then the Secretary and the Federal Government ought to have the prerogative to establish a nonstate agency or some other entity to work in that.

But I think it could be done. I think it involves looking at the business operations of those institutions. I think it also involves looking at the educational operations and outcomes of that operation to assure that they're viable on both counts.

Mrs. LOWEY. Dr. Kipp.

Mr. KIPP. One point in terms of flexibility, in terms of the structure. Both in the NCHELP recommendations and in my own personal experience, what we're really talking about is a role for the Secretary or the Congress in terms of mandating minimum State standards for licensure, not maximum standards.

Quite frankly, a number of the standards for financial capability for administrative capability and in terms of performance that are now what the Secretary calls for, California no longer feels confident will provide adequate protection to the students and to the taxpayers of the State.

And so our standards for being able to operate a school in California, independent of any issues of financial aid, are more demanding. In that connection as well, I think whether we're talking about overseeing, in addition to putting those standards in place, whether the States actually enforce them, one of the problems that we have, as Joe McCormick pointed out, is that we do have, in fact, in place a number of standards that in terms of the Federal certification process by the department are simply being ignored or not being rigorously enforced.

The one to one asset to liability ratio that exists right—now we've been looking at some of the schools that have recently received certification by the Federal Government and reviewing those statements, which are unaudited statements. And even a beginning accounting student would not be willing to account some of the things that are listed as assets there. And a closer inspection suggests quite clearly that the school doesn't even meet minimum Federal standards.

I think we need to have minimum Federal standards. I think we need to have flexibilities for States to go further in terms of protecting their own citizens. The areas that NCHELP and many of the States are focusing on are truth in advertising and disclosure areas, performance standards, financial capability, administrative performance.

In our own case, we are not looking at areas such as curricula, pedagogical techniques, the qualifications of faculty and so forth. We're looking at the actual performance of the institution in delivering the education and measuring it in terms of outcomes and trying to make sure that there's a reasonable assurance that what they promise is, in fact, what they can deliver.

Mrs. LOWEY. Thank you. Mr. McCormick.

Mr. MCCORMICK. I really would not have a lot that I would add to what Dr. Kipp has already said other than to say that you find in several States, Texas being one of them, there are standards of performance. There are standards of adminstration, if you will, for the traditional sector in higher education that are enforced and are regulated by a State agency that, in fact, you do not find in the for-profit sector. And the agency that licenses those institutions does not put them under the same tests.

And I guess it may be at the risk of an oversimplification that I, as a consumer, would simply like to know that if I decide to enroll in plumbing, that that plumbing course is credible whether I decide to do it at a traditional institution, a junior college or a for-profit institution. That in some minimum way, all of those institutions have had to meet a minimum standard.

And you simply do not find that present in several of the States. And I think the proposal that Dr. Longanecker is putting forth speaks to that, and that I would support that.

Mrs. LOWEY. Would either Mr. Sweeney or Dr. Manning care to comment?

Mr. MANNING. I just wanted to emphasize again, Mrs. Lowey, that I think these remarks point out that a cooperative arrangement among the States, the Federal Government and the private accrediting organizations work well. The accrediting organizations do look at curriculum and faculty and, as you have heard, some of the States do not in their arrangement.

This, I think, the triad, is a well established activity that needs improvement, not replacement. And many of the suggestions that have been made today and elsewhere would indeed speak to the improvement of three components.

Mrs. LOWEY. Now, before you stated that you don't think the States would leap forward. I guess the question is here is how much should we push them forward, encourage them to move forward, encourage their participation more actively in order to preserve the integrity of the program?

Mr. MANNING. I think you should. And in my written testimony, I suggest that the Federal Government does have a role in encouraging the States to improve their authorization statutes and their authorization and the administration of those authorization statutes.

Various kinds of incentives could be devised, including the lowering of interest rates to students, which would benefit the students, provide and incentive for the States to change their practice to benefit their own citizens. Similarly, incentives could be provided to encourage the institutions to pressure the States to improve things, as well as, possibly, direct subsidies to the States.

I'm a little skeptical about direct subsidies to the States because if you look at the history of the VA program, successful as it may be, it costs roughly $14 to $15 million a year at the present time and has been going on for some 45 years with no possibility of its departing in the future.

Mrs. LOWEY. Actually, that's a direct, to Mr. Sweeney because certainly your testimony commented on the effectiveness of the VA program and the impact of Federal funds working within the VA program.

Would you care comment?

Mr. SWEENEY. I certainly believe that $12 million, although a large amount of money, when you're talking about over $2 billion a year in just the one area of student financial assistance programs, the Stafford loan program, to increase the effectiveness of the entire field of student financial assistance programs with a dollar amount that might double or triple the amount that I've just mentioned, is certainly an effective way of approaching government.

One other comment that I would make is that with respect to the single coordinating entity within a State, I think it's extremely important that this occur because of the fragmentation of current licensing bodies. You have varying levels of expertise within States.

I come from a very small State and we have a half a dozen licensing bodies. And those licensing personnel, I think it would take a great deal of training to bring the people up to a level of expertise that we're talking about where people could adequately address such things as appropriate admissions standards, appropriate progress standards, financial stability of an institution, quality of the education and so forth. I would add that point.

Mrs. LOWEY. Thank you. And before I turn the questioning over, I just want to say to the panel that in order to preserve the integrity of this program, I am interested in pursuing State licensure. I know that Mr. Goodling is also working on this issue and I hope to work closely with him. And I thank you very much for your input.

Mr. Henry.

Mr. HENRY. I have no questions.

Mrs. LOWEY. Mr. Andrews.

Mr. ANDREWS. Thank you , Madame Chairwoman. I appreciate the testimony of everyone this morning. Mr. McCormick, I wanted to see if we could expand a bit on some of the things that you've said very well.

I understand the sort of implicit assumption behind your testimony is that if these continuing problems of the program integrity persist, we're going to undercut the public consensus that's been built up over the last 25 or 30 years for these kinds of programs. I think you make that connection very well.

On page two of your statement you say that the vast majority of changes to the student aid programs in the last 10 years have been primarily driven by budget cutting factors designed to achieve "savings in Federal expenditures" in order to meet mandated budget targets.

Could you give us some of the specific manifestations of budget driven decisions that have undercut program integrity?

Mr. **McCormick**. Yes, sir. I think the most classic example in recent years was the 1985 Budget Reconciliation Act, which spelled out that guarantee agencies would return to the Treasury through a spin-down process some $250 million. And that was based on a study that the GAO did at that time that said guarantee agencies, by and large, had adequate reserves at a level of 1 percent of loans outstanding.

You heard testimony yesterday from the GAO, the same GAO that recommended $250 million be returned to the Treasury, that guarantee agencies needed to maintain certain minimum reserve levels in order to maintain credibility and soundness in the guaranteed student loan program.

That is just one example of in the heat of the moment in the effort to reach the budget targets that you were trying to reach in a given year a solution was embraced that did not necessarily serve the student aid program well.

There are other examples of where that has occurred, and the actual result has not been to improve the program, has not been to enhance our ability to collect loans. It has made it more difficult for not only guarantee agencies but lenders, secondary markets and others to maintain the healthiness of the program.

Mr. **Andrews**. Sounds like what you're saying is that program integrity has been sacrificed on the altar of cash flow for the Federal Government. Bring in the dollars.

Mr. **McCormick**. What I'm trying to suggest, and I know that this committee can not do that in reauthorization, but I hope that you can share this information with your colleagues on the Budget Committee to say as we strive to meet our responsibilities to curb the deficit and deal with the Federal budget, we take a little more care as to the methodology we're going to employ to do that.

Mr. **Andrews**. Now, there's another couple statements which I think fit together. On page two you say, "It is not an insurmountable problem," referring to the default problem. "It is not an insurmountable problem, nor is it an indication that the guaranteed student loan program is seriously flawed."

And then on page three you say, "In focusing our attention on the abuses of trade schools, little attention was paid to the lenders, secondary markets and, yes, Sally Mae, which provided money and looked the other way while default rates soared."

When I read those two statements together, I'm reminded of yesterday's testimony from the Department of Education where we were confronted with facts that said that defaults have risen from 10 percent of program outlays to 44 percent of program outlays over about a 10 year period.

The number of individuals assigned to work on this problem within the department has gone from 800 to about 1,100 over the same 10 year period and they're requesting, apparently, 150 more. Programs that do truck driving by mail—and thank God they don't do brain surgery by mail, I said to someone yesterday—programs that do that sort of thing have been increasing in their funding.

What that sounds to me like is that the people who are looking the other way are those responsible for regulating this. And our focus ought not to be so much on flaws on the statutory structure as it ought to be on negligent or inadequate regulation and enforcement.

Would you agree with that statement?

Mr. McCormick. Yes, sir, I would. If you would examine the activities of the Department of Education in the 1980s, particularly after the Budget Reconciliation of 1981, you will see that in the last full year, 1980, over 2,000 program reviews of schools and lenders were conducted by the Department of Education in 1980. In 1989, only 300 program reviews were conducted. In 1986, it was mandated in the law that guarantee agencies do the primary program compliance review effort.

And I think what you saw over the whole period of the 1980s was a Department of Education that pulled back, that did not scrutinize, did not oversee the program with the same intensity that they were in 1989. And you saw a proliferation of loan volume, of number of new schools being certified in the period of 1986 to 1989.

And it really was not until the latter part of 1989 when Congress enacted some restrictions in the budget reconciliation of 1989 and then again in December of 1990, it wasn't until then that we started getting a little different signal from the Department of Education that maybe all of us should be a little more responsible in what we're doing.

Mr. Andrews. What kinds of signals do you think they ought to be sending? What kinds of things should the department be doing to be more responsive to the legislation that's already in place that would help us attack these integrity problems.

Mr. McCormick. I think Chairman Ford hit the nail on the head when he said they ought to be doing exactly what the United States Congress has told them to do for the last 12 years. They had the legal authority, they had the power within the Secretary's office to have avoided these problems from the very beginning.

Mr. Andrews. One of the aspects of your testimony on page seven that I think is instructive is that you're, in effect, proposing a solution as well as defining the problem. We hear from the department that it's subjected to diminishing resources, although I'm not sure the facts always bear that out, that they're subjected to diminishing resources and they have too few hands to do much more work.

You suggest that we look at enacting legislation to require the department to develop regulations that reward good performance in carrying out the purpose of the programs. Exemplary schools, lenders, guarantors and services could be relieved from the more burdensome, redundant and unnecessary rules.

I take it that what you're really suggesting is a system of incentive based regulations, where those who are lending and engaging in guarantor work and operating schools, who are within the parameters of the rules are given more flexibility and freedom, and then we target and focus our regulatory resources on those who are abusing the rules.

How would that work?

Mr. McCormick. It's very simple. Historically, the Department of Education has taken a blanket approach to the regulatory process and said irrespective of the abuse, irrespective of the problem we're trying to address, all institutions, regardless of how long or how short a time frame they've been in the programs, must abide by those regulations.

And as a result, I have had public junior colleges in Texas that historically have been in the student aid programs for many years drop out of the guaranteed student loan program by simply saying, "Enough is enough. I can not deal with the regulations that I'm now required to do."

I think that we are professionals; I think there are professionals within the department. And you can recognize exemplary performance when you see it. And you can reward it by saying, "I'm not going to put you under the same yard stick that I necessarily will put another school or another lender or another guarantee agency that is not performing at the same level that your are."

Negotiated rulemaking is an example of this. And it works in other areas of the Federal Government, and it can work in this area. You actually have a pilot project being conducted right now by the Department of Education on quality assurance that involves some 100 to 200 colleges. In exchange for their agreeing to do some things differently, they don't have to come under the whole litany of rules and regulations that all the other schools do.

I think that ought to be encouraged and ought to be expanded greatly.

Mr. ANDREWS. In effect, what you're saying is we multiply the existing incentives, both market and regulatory, for the good guys and multiply the market and regulatory disincentives for the bad guys. And I would assume focus—maybe the department wouldn't need 1,100 bureaucrats if they spend more time on some of the black hats.

The other point that I just want to close on. I was struck by your way of talking about the opportunity cost of this careless regulation that we've had. And let me use that phrase. You know, if the default rates were where they were at the beginning of the decade of the 1980s, around 10 percent, it seems to me we would be getting about another $2 billion a year in interest subsidy, which could leverage up to $20 billion a year or so of loans for students.

And how many more people could we educate with an additional $20 billion worth of money in the pool, which would address your concern about the plight of the middle class.

I guess one of our problems is we don't know answers to questions like that, or at least we didn't hear them yesterday from the department because, as you point out on page nine, there is a need for us to direct the Department of Education to come into compliance with existing Federal law by bringing the national student loan database into full operation as soon as possible.

The question I want to ask you, and again, I go back to your point about Chairman Ford's point, we ought to go to the rudimentary point the department ought to follow the instructions written into the statute. If those instructions were followed and if we were able to achieve that, what other kinds of things might we know and what would the benefits of that be in crafting a more intelligent policy?

Mr. MCCORMICK. I think if we had in 1981—or, in the 1980s, if we had gotten serious about the student loan data bank and we really had the ability to exchange information among States, we could have avoided what many of us in the industry term technical defaults. Young people that literally would not have defaulted on their loans had the system had the ability to keep track of them and respond to their mobility in the process.

We literally have cases in which students were in school, were fully qualified for in-school interest benefits and deferments and didn't get it because the system through the guarantee agencies, Department of Education or whatever, lost them.

And we have got—I don't know what the number is. I'd rather not say. But there's no question that there is a problem in our inability to communicate in this program that I think is inexcusable. We've waited long enough, and there are ways that the department can implement this recommendation. And I think you could avoid a very serious problem that we call technical defaults where students really should have gotten a deferment instead of gotten an IRS offset.

Mr. ANDREWS. Finally, I note you have 25 years of experience in this field and have dealt with all different levels of institutions and decision making. Why do you think the department hasn't come into compliance with creating the data base? What's your analysis of why that hasn't happened?

Mr. McCORMICK. I think, in all honesty and candor, and this will get me in trouble again, too.

Mr. ANDREWS. We won't tell anybody.

Mr. McCORMICK. Over the past several years there's been an entire industry, as I mentioned in my testimony, growing up around the student aid programs. And there are those who fear a national loan data base. There are those who fear it simply because they feel the department is too incompetent to administer it and all they would do is mess it up.

And there is some historical evidence to indicate that might be the end result given the department's track record. But I think the bottom line that we ought to face up to as States, as institutions, as lenders, as the national secondary market, is that technology has finally brought us to the point that even someone as incompetent as the Department of Education probably could adequately administer a data base. And technology is so far ahead of this industry in terms of how you administer these programs.

It is time for all of us to quit making excuses and get on with it.

Mr. ANDREWS. I appreciate that. I just wish you'd be a little more forthright about how you feel about the department.

[Laughter.]

Mr. ANDREWS. Thank you very much.

Mrs. LOWEY. Mr. McCormick, I appreciate your testimony and also the questions from my colleagues. I would just like to pursue it just to clarify it. I believe you were quite forthright, but I just want to be sure we have it clear for the record.

As we all know, in the period of the 1980s, during the deregulation of the S&Ls, and there seems to be some comparison here—at the same time as we were deregulating the S&Ls there was a very clear directive to decrease the administrative oversight of the S&Ls. And we know that in places like Texas the administration of this program was decreased more than 60 percent.

I just want to clarify, is it total incompetence? Was there a directive? Was there a specific policy not to administer these programs? Or is it just total incompetence?

Mr. McCORMICK. No. I think that the thing that was brought to bear from the research that I have done on the Federal Government's behavior over that 10 year period was very much part of the philosophy that that Administration had as to how to administer programs in the various departments.

Mrs. LOWEY. Just don't do it.

Mr. McCORMICK. And they had a mission, they had a mandate from their President and their Director of Office of Management and Budget that they would conduct business in certain ways and they would reduce the employees of the Department of Education.

You have to remember that President Reagan ran on a campaign in 1980 that he would abolish the Department of Education. And I don't think in 1981 he changed his mind very much about his desire to deal with that department. And I think they dealt with the Department of Education based on their philosophical approach to what that department should do. And we're now paying the price for that.

Mrs. LOWEY. Could you also clarify for us the numbers of staff of the Department of Education during the period of 1980 through 1990. As I understood from my colleague, I believe there was an increase from 800 to 1100; is that correct?

Mr. McCORMICK. There was an increase in the staff of the Collections area. In total, there was a decrease of approximately 20 percent in the Department of Education staff from 1980 to 1988.

Mrs. LOWEY. But an increase in the Collection area from 800 to 1100, yet the default rate kept growing so that those staff that were added just seemed to be equally incompetent and didn't do the job any more effectively.

Mr. McCORMICK. If the only thing we're going to focus on is the student after he's defaulted, we're going to lose the game. We have got to get to the front door of this process, and that's where they were cutting back in the staffing and cutting back in their oversight responsibilities.

If all we're going to do is just add collectors in terms of trying to resolve these problems, we're going to be spinning our wheels and we're going to lose the game. And I think that was a strategic error on their part.

Mrs. LOWEY. Given the incompetence of the way the program was administered, just to reinforce your earlier recommendation, you feel we have a better chance at success with a State licensure procedure.

Mr. McCORMICK. Absolutely. I think the department ought to recognize it's limitations, if you will, and recognize the availability of the States to assist them and be full partners. There are some extremely competent agencies and people in the several States that could very well save the Department of Education a lot of time and money. The Veterans' Administration has demonstrated a methodology, a way of doing that.

You might not agree with all that parameters the Veterans' Administration has placed on the way they administer that program, but you very well have a model that you can look at where a Federal agency has used the several States in a very meaningful way to administer a Federal program.

Mrs. LOWEY. Well, I thank you very much and I certainly look forward to working with you as we develop State licensure legislation, and I thank you very much.

Mr. MCCORMICK. Thank you.

Mr. COLEMAN. Let me, Mr. McCormick, make sure I understand your recommendation and your testimony regarding removing accreditation from the process—we talked about this earlier.

Mr. MCCORMICK. Yes, sir.

Mr. COLEMAN. You're not suggesting that the department, itself, maintain a staff administrative apparatus to do the things that you think the States ought to be doing and licensing.

Mr. MCCORMICK. That's correct. I am saying that for the purposes of licensing schools—that has been a time-honored, traditionally State role and that's exactly where it should remain.

Mr. COLEMAN. To be made eligible for certification for Title IV programs?

Mr. MCCORMICK. For certification for Title IV programs, I think the Federal Government, through its Department of Education has, under existing law, all the criteria that it needs to provide that certification with the improvement in having minimum Federal standards that States would adhere to in terms of licensing schools to operate.

Mr. COLEMAN. The States would actually continue to do the licensing based upon Federal guidelines and criteria which, as I think I asked earlier, could be written into the statute.

Mr. MCCORMICK. Yes. But the question of whether or not you allow me as a school to participate in Title IV student aid should be squarely answered by the Department of Education in its certification process.

Mr. COLEMAN. So, if a school were to be licensed under your proposal, it does not automatically then, trigger a certification by the Department of Education.

Mr. MCCORMICK. No, it does not.

Mr. COLEMAN. What I'm trying to get at is that there is more to it.

Mr. MCCORMICK. Exactly.

Mr. COLEMAN. It's not a ministerial act, it is a very important and substantive act that that department wants to make and should make, under your proposal.

Mr. MCCORMICK. Yes, sir. And they should be held accountable for those certifications.

Mr. COLEMAN. So, on the one hand, we're going to try to beef up the auditing and the collections and also the threshold certification aspect of this program; that's your suggestion.

Mr. MCCORMICK. Yes, sir.

Mr. COLEMAN. All right. Let me also ask you, in Texas I know you've gone through some lending—there was some suggestion that perhaps all schools weren't being serviced and the lending wasn't being made to certain students to attend proprietary schools, or what have you. And I wonder, do you believe that the current law allows the department to prohibit certain lenders from lending if they have, what we would call a default rate, like we do with institutions, of a certain percent?

Mr. **McCormick**. I think under the current law, and I think it is important that everyone understands this, private lenders are in the program under a volunteer basis. They are not required to make loans to any student attending any type of institution. And I think we have to keep in mind that, given that premise, they have delivered $11 billion a year in capital to this program, willingly, and in a volunteer sense, on the basis of their ability to earn a respectable yield and on the basis of minimizing their risk, and that is very crucial.

I don't think, under the law, that they are required to make loans to any particular type of school per se. They have the ability as originating lenders to set certain criteria, and the lenders in Texas have done that, and said, "Under certain conditions, we'll make loans, and under certain other conditions, we're not willing to make loans."

Probably, years ago, when we first got into the Guaranteed Student Loan business, the criteria that was most often talked about was a bank only served its customers. And then it expanded to a geographical area——

Mr. **Coleman**. But my question is: A default rate of a lending institution, is that a significant factor that we ought to take into consideration? We have taken it into consideration for institutions, we've made them ineligible. Should certain banks be made ineligible to lend more money if it is likely to end up as part of the $2 billion we're all concerned about, that is, if they continue to make bad loans and end up having the taxpayers pick it up?

My question was: Does the current law allow that? Should it, if it doesn't?

Mr. **McCormick**. I'm not a lawyer and I'm not an expert on the actual nuances of the rules and regulations, but I would assume—and please don't hold me to this answer—that if the department can pass a regulation that puts schools under certain levels of default rates, it could also pass a similar recommendation that applied to originating lenders.

Mr. **Coleman**. Should we require that? That's a valuable question.

Mr. **McCormick**. No.

Mr. **Coleman**. You don't think so?

Mr. **McCormick**. I don't think that you should require that. I think the marketplace, itself, takes care of that for you.

Lenders cannot stay in the program. They cannot maintain the yield on the use of their money if they continue to have higher and higher default rates. So the marketplace provides a very adequate control in that respect I think.

Mr. **Coleman**. But they are guaranteed loans, so the lender ends up——

Mr. **McCormick**. I'm glad you raised that point. One of the points that was not made yesterday that should have been made is it's a conditionally guaranteed loan. It is not an absolute guaranteed loan. It is guaranteed under the condition that you made the loan to an eligible borrower attending an eligible school, enrolled in an eligible program.

And though the entire life of that loan, prior to submitting a claim to a guarantee agency, you would do certain things as a lender. We have, for example, in our program a rejection rate on claims submitted by lenders of 35 percent on the average. Now that means 35 percent of the loans that lenders submitted to me, he gets back as noninsured loans that he has to "cure" or reestablish their insurability so he can submit a claim. So he is taking some risk by participating in the program.

Mr. COLEMAN. Most of those are based upon the due diligence requirements?

Mr. MCCORMICK. Exactly. Yes, sir.

Mr. COLEMAN. Which really don't get to the heart of what we're talking about in the sense that Bank A lends to students who attend Institution Z, and Z's got a default rate, or questionable quality of education. But they continue to do it because as long as they follow these due diligence procedures, they're going to be all right.

Knowing of your background and your testimony, we believe that you would think that there ought to be some area here that we might be able to tighten down a little bit. But probing and not getting much, I'll leave this witness alone.

Mr. MCCORMICK. It was not a part of my testimony, but I think the re asking for 12 weeks without pay. It will not cost the employer anything to let you take off. The only thing is, they do not give your job away while you are gone.

We are so far behind the rest of the coin Texas and I'm sure they do in California, if you really scrutinize these claims as they come to you and you actually reject some, you get a much more responsible lender in your program.

So I think there are some things that you can do within the current law that would derive a different result by the lending community.

Mr. COLEMAN. One final question—Dr. Longanecker, and I appreciate your testimony and we hope to follow up with some personal visits if you can come back and do this ad hoc, so we can see, if we're working together, how we can get this thing done.

But let me ask you—one of the things that we're always told by accrediting associations is that if we crack down on some of these schools, they're going to sue us. And if they sue us, we could be liable, and also, we could be tied up in court for years. Do we avoid that scenario under your licensing suggestions by the State, or has your experience been that the schools sue you instead of the accreditation agency, and are they still tied up for years in court?

Mr. LONGANECKER. There will be suits. There are suits today. There will be more suits. I think if we have nationally proved guidelines and we operate under rules and regulations that are consistent with those, then we aren't going to have as much litigiousness as we have today.

One of the dilemmas we have today, I think, is that if we have fairly substantial regulation, then people say, "Well, that's outrageous." If we were to try to impose some of the things we've even suggested here, they would say, "You don't have the authority to cut us off on the basis of that." But if its established that we should develop guidelines within those parameters and we do that and it's approved by the Secretary, we may still be sued but we'll win the case.

Mr. **Coleman**. Well, the difference is that one's a private, voluntary association, the other one is public action by the State. And as you indicated, as long as you are framed within the proper legal requirements of due process and certainty and are not being vague in your regulations of the statutory language, itself—whereas the accrediting agency is somewhat nebulous, and in a voluntary organization, it seems to me that we would do much better by moving ahead toward this type of approach with some real teeth rather than toward a continuing process that we have which has all sorts of, I think, problems with it.

Mr. **Longanecker**. I think one of the other dilemmas you have is accrediting associations are voluntary organizations that review the progress of their members. And that's a very valuable piece of the overall quality control activity in higher education. It's a self-examination process. But if it, in fact, becomes onerous on the selves they won't play in that game. It's kind of a Catch 22 for them.

Mr. **Manning**. If I may make a comment with respect to the litigiousness, that is a concern. The accrediting organizations are not insured and, in fact, liability insurance, which they have had, has just been dropped by the insurer because of their concern over the costs of litigation which they were uncertain about. It is a problem.

You may, however, as you look into this further, want to examine the question of the Federal Bankruptcy Code, because while changes were made with respect to the legislation last fall, we're talking here about State authorization to operate. And it is not clear what the status of that is with respect to protection under a Chapter XI reorganization. So I simply raise that as an issue.

My own feeling is we need a good triad, they complement one another, and I stand alongside my friend, David Longanecker, in saying we really do need to improve State authorization process as we keep accreditation and deal more with the Federal eligibility certification process, all three.

Mrs. **Lowey**. I want to thank the panel, and we look forward to working with you. And I was pleased to see that there is a consensus about the importance of improving State licensure, and I thank you.

Will the next panel come forward?

Mr. Henry?

Mr. **Henry**. Thank you Madam Chairman. I would like to express my appreciation for the chair for allowing us to have this brief hearing and this panel presentation on H.R. 2433, the National College Athletics Accountability Act, legislation analogous to that which the House adopted last year pertaining to public disclosure of athletically derived revenues and expenditures.

By way of background to the panel and of welcome to our panelists, Madam Chairman, let me indicate that one of the problems we have in college athletics is that we have tolerated many of the abuses in major sports programs under the assumption that these programs generate revenues for the general operating budgets of the school. And many of the abuses which we have seen develop over the years have been tolerated by the public in the belief, which we now know very clearly is mistaken, that big time athletic programs are revenue raisers for schools.

The magnitude of the financial losses attributable to athletic programs, particularly in Division IA schools where the programs have grown increasingly large, continues to grow. And this matter really relates very directly to the cost of education.

A study—well I'll come to that in my formal statement in just a minute. It would be fair to say that the average student at a Division IA school, the average student in tuition charges, is subsidizing athletic program losses, just losses, by $100 a year. If every student receiving a Stafford loan were attending a Division IA school, the Stafford loan subsidies on an annual basis for university athletics would amount to $170 million per year.

Over the 4 year cycle of higher education, that would mean that over a 4 year cycle, one college cycle, we would have Stafford or government subsidies of athletic program losses approaching two-thirds billion dollars. Now that's just the program revenue losses. That does not deal with the subsidies for the operation. Very conservative figures would estimate that the average college student at a Division IA school is paying up to $100 a year in cost for athletic department program subsidies, including losses but also other operational costs.

I would submit, Madam Chairman, when one of the issues before us is affordability higher education, that this is a serious problem. Eighty-six years ago, there were 18 deaths on college football fields caused by violent play with inadequate equipment. That prompted President Theodore Roosevelt to call for reform in intercollegiate athletics. And the following year, in 1906, saw the establishment of the National Collegiate Athletics Association, the NCAA.

Last year in the Congress, three Right to Know bills were introduced, relative to higher education. The first was introduced by Congressman McMillen, our colleague who also served on the Knight Commission, which called for disclosure of graduation rates of athletes. The second was introduced by our colleague, Mr. Goodling, to have disclosure of campus crime rates, particularly assault and violent crime. The third was introduced by myself, which called for a disclosure by institutions on uniform data base of athletically derived revenues and athletic expenditures.

All three proposals were placed together in one bill and passed the House comfortably. However, in the Senate, the NCAA, an institution which was originally established through Congress in 1906 to reform college athletics, removed that latter provision relative to income and revenue disclosure in negotiations with the Senate and the Conference in the waning hours of the session.

However, the public, again, is looking to bring about reform in college sports. Death is no longer the obvious danger, but many livelihoods are at stake. Big time athletic programs have taken focus and resources away from academics at the very moment in our history when America's level of play in the global marketplace and in the world of ideas is slipping.

Now is that time that we, as a Nation, must examine our priorities in higher learning. The members of this subcommittee have a special opportunity as we revisit the Higher Education Act to write the course, to make the positive statement that this country's young minds come first.

Gnawing at the underside of our national love affair with college sports is the fact that it is a business bust, many athletics programs are millions of dollars in the red despite sellout crowds and post-season appearances. A 1986 study by the American Association of State Colleges and Universities found that among 67 NCAA division schools, only 9 generated surplus revenues. They fear that our colleges and universities are mortgaging their academic programs and their integrity on deficit-laden sports programs. I believe the public has a right to know about it through disclosure of their budgets.

No data exists to support the popular perception that athletic success benefits academics or any other aspect of the college or university other than the sports program itself, and I believe the public should know about it. Alumni giving inspired by sports is almost always directed at the sports programs itself. Sports generated revenue from sources such as ticket sales, broadcast income, et cetera is most often quickly swallowed by the self-perpetuating sports programs.

I have introduced legislation which would simply require public disclosure of athletic revenues and expenditures at public schools and private institutions that offer athletic scholarships. The bill would simply bring to light information that's been buried for years at most schools.

Madam Chairman, here's what has to be understood: many of these programs are off-budget items with privately incorporated athletic departments and programs. Thus, the revenues, as well as the cost, are often not available even to the college officers or the boards of control.

My legislation is in no way intrusive in terms of telling a college president or State legislature or a board of control or trustees how they ought to manage their athletic programs. It seeks, however, to establish in law a uniform data base whereby the public can make it well known to its governing officials, and whereby the boards and the college CEOs can, in fact, get control of their athletic programs.

It will be argued in the testimony before us that such data already exists. The NCAA presents a report which was published just last year on a 5 year study of its own programs. However, in their own study, there was over a 40 percent nonparticipation rate, and the third highest expenditure totalled in that study is miscellaneous. There's no guarantee of uniformity in the data.

Even the Knight Commission report does not make any recommendation guaranteeing uniformity, mandating collection of the data, or most importantly, disclosure of the data. And that is why Representative McMillen, who served on that commission, is also supportive of my quest in this area.

With that, Madam Chairman, I would like to introduce two people who are here with us to deal with this: Mr. Andy Geiger, who is the Athletic Director of the University of Maryland, and Dr. Murray Sperber, an English Professor from Indiana University. Dr. Sperber has written a very well-known book called *College Sports, Inc.* which has provided a lot of interest in this issue.

Also, Madam Chairman, I would ask unanimous consent to enter into the record a written testimony presented by sports broadcaster, Howard Cosell, whose book is approaching the best seller list, *What's Wrong With College Sports*, the first 60 pages of which deal with the problems of college and university sports, and also a written testimony provided by Robert O'Neil, a professor of law at the University of Virginia.

Thank you Madam Chairman.

Mrs. LOWEY. Without objection, thank you Mr. Henry.

[The prepared statements of Hon. Paul B. Henry, Howard Cosell and Robert O'Neil follow:]

OPENING STATEMENT BY REP. PAUL HENRY (R-MICH)
ON THE NATIONAL COLLEGE ATHLETICS ACCOUNTABILITY ACT
H.R. 2433
BEFORE THE SUBCOMMITTEE ON POSTSECONDARY EDUCATION
MAY 30, 1991

Mr. Chairman:

Thank you for this time to discuss an increasingly critical topic.

Eighty-six years ago, 18 deaths on college football fields, caused by violent play with inadequate equipment, prompted President Theodore Roosevelt's call for reform in intercollegiate athletics. The following year, 1906, saw the establishment of the National Collegiate Athletics Association — the NCAA.

Today, Washington once again is looking to bring about reform in college sports. Death is no longer an obvious danger. But many American livelihoods are at stake. Big-time athletics programs have taken focus and resources away from academics, at the very moment in our history when America's level of play in the global marketplace, and in the world of ideas, is slipping.

Now is the time that we, as a nation, must examine our priorities in higher learning. And the Members of this Subcommittee have a special opportunity, as we revisit the Higher Education Act, to right the course — to make the positive statement that this country's young minds come first.

I am a former college professor and a former member of my state's Board of Education. And, most importantly, I am a father. I understand the importance of higher education.

I am also, like many, many Americans, a fan of college sports. And I understand, particularly as an alumnus of Duke University, that it is athletics programs that provide the means by which most colleges and universities are known today.

But, gnawing at the underside of our national love affair with college sports is the fact that it is a business bust. Many athletics programs are millions of dollars in the red, despite sell-out crowds and post-season appearances. A 1986 study by the American Association of State Colleges and Universities found that among 67 NCAA Division I schools, only nine generated surplus revenues. I fear that our colleges and universities are mortgaging their academic programs and integrity on deficit-laden sports programs. And, I believe the public should know about it.

No data exist to support the popular perception that athletic success benefits academics or any other aspect of the college or university, other than the sports program itself. I believe the public should know about it.

Alumni giving inspired by sports is almost always directed at the sports program. Sports-generated revenue from sources such as ticket sales and broadcast income is most often quickly swallowed by self-perpetuating sports programs. And I believe the public should know about it.

I have introduced legislation that would require public disclosure of athletics revenues and expenditures at public schools that offer athletics scholarships. This bill, H.R. 2433, the National College Athletics Accountability Act, would simply bring to light information that's been buried for years at most schools. The legislation would put athletics programs in line with most academic departments, whose financial books are open.

My goal is simply to provide the public with the tools of knowledge as it seeks to understand the role of athletics within host institutions.

This bill was passed by the House last year as part of the College Student Right To Know Act, but the financial disclosure language was dropped in conference during the waning hours of the Congress.

Mr. Chairman, we are by now familiar with the excellent work of the Knight Commission, and its series of reform proposals. And we are also familiar with the growing consensus within Congress, that the College Sports Reform Movement has arrived on Capitol Hill. Interest is growing in Congressional remedies. But the last thing we should consider are policies that would amount to government-managed university programs.

However, that approach appears to be the trend in several bills being considered or planned in this Congress. Among their provisions are new Congressionally-imposed requirements for the distribution of post-season revenues among NCAA member schools, mandated "due process" procedures for the NCAA, and restructured governing and advisory bodies within intercollegiate athletics. These are examples of what I consider to be the wrong legislative direction.

I believe that Congress does have a role in encouraging reform, but that role must stop short of federal meddling in the actual governance of our nation's colleges and universities. I believe that the missing, hands-on players in the college sports reform process are the American people. It is their tax dollars that support the institutions of higher learning whose names are carried by their athletics programs.

Let me reiterate, Mr. Chairman: My approach has been rooted in a concern shared by more and more Americans: We must, as a nation, reassess our educational priorities. The role of intercollegiate athletics is one crucial issue we must re-think. And in that sense, the issue is central to a serious discussion of education reform.

Will public disclosure of athletics budgets make it easier for the public, college administrators, and college boards to demand accountability? Will they be able to ask more questions about the role of sports programs in their colleges and universities? I hope so.

I am not anti-sports, Mr. Chairman, and my bill is not anti-sports. College sports definitely has a place on our campuses and in our national life. I am simply asserting that the public, through access to reality, must be able to help determine that place, at a time of intense concern over the kind of graduates our schools are producing. Afterall, when did we last import a quarterback to Japan?

Mr. Chairman, James Duderstadt, the president of one of the nation's truly excellent higher learning institutions, the University of Michigan, once stated that he hopes one day that his school will be known more for its Nobel Prize winners rather than sports championships. I share his hope, as I'm sure my colleagues do as they think about the schools in their own states. It is in a spirit of hope and true concern that I have introduced H.R. 2433, and I want to thank you again, Mr. Chairman, for this opportunity today to discuss the bill.

Let me conclude with a quick word of thanks to our two witnesses today, Mr. Andy Geiger, who is the athletic director at the University of Maryland, and Dr. Murray Sperber, an English professor from Indiana University, recognized nationally as an authority on the topic of finances in college athletics. I also ask for unanimous consent to enter into the record written testimony provided by Robert O'Neil, a professor of law at the University of Virginia and general counsel of the American Association of University Professors, and from the renowned sports commentator, Howard Cosell.

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Howard Cosell

My name is Howard Cosell. I have been a sports commentator associated with the American Broadcasting Companies for more than 38 years. During that time my life has chartered many courses but I have been unwavering in one, and that is my conviction about education and the fact that college sports as presently constructed have not been a beneficial force in terms of education.

It is clear that at this point in time education has never been more important to the American society. During the course of my life I had the privilege of being invited to conduct a fully accredited course at Yale entitled "Big Time College Sports in the American Society." I had been invited to come to Yale by Kingman Brewster as a Hoyt Fellow at Silliman College. It was an invitation I eagerly accepted and it derived from Dr. Brewster's expressed respect for my reporting work on the 1968 Olympic Games in Mexico City. Subsequently Dr. A. Bartlett Giamatti made it absolutely clear in nationally recorded conversations with me that "Athletics can be an extension of the best values we have and the best a university has to offer its students. But that's not the way it is today."

There is a fiction about sports -- one of the great myths in our society. This is the fiction that physics laboratories and great contributions toward learning derive from profits in sports. This is not so. On the contrary, monies deriving from athletics teams are poured right back into athletic programs. So great a university as the University of Michigan, with so skilled an administrator as Don Canham, is a prime example. The athletic department is separately incorporated and the monies go right back into recruitment and subsidization of athletes.

Like Congressman Paul Henry, I do not want to see government regulation of college sports, but proposed bills like Mr. Henry's are designed, not to regulate college sports, but rather to help shed light on the true state of college sports. John Brademas, President Emeritus of New York University, spent many years in Congress as an Indiana legislator. He created the University Athletic Association when he took over at New York University. He, like Congressman Henry, was deeply concerned with college sports and he was deeply concerned with education. Thus the University Athletic Association, comprised of a group of the finest universities and colleges in this country, was born. The Association includes the University of Chicago, Washington University of St. Louis (where I dedicated their athletic facility), Carnegie-Mellon, Case Western Reserve, University of Rochester, Brandeis University, New York University, Johns Hopkins University (where I delivered the commencement address two years ago), and Emory University, and they are proof positive that you can derive the best value of sport without defiling educational standards.

So we are making inroads and Congressman Henry's efforts are vital and to be applauded, as are the efforts of Senator Bill Bradley of New Jersey and Congressman Tom McMillan of Maryland. I lived through the horror of the Munich Olympics with Congressman McMillan,. I left the great stadium on September 6, 1972 with the words of the late Avery Brundage ringing in my ears. "Let the games go on." I will never forget that day. Also with me were my late wife, Emmy, and Doug Collins, now an NBA analyst, then the star of our Olympic team. I will never forget that day. Red Smith wrote an impassioned column demanding the cancellation of the games. I said, "There was a time for Avery Brundage. It was the time of William of Orange." What all this points out is not just the national , but the international confusion about the proper place of sports in this society.

I thank Congressman Henry for his efforts and I think the country should be grateful to him. I support his efforts as I do Senator Bradley's and Congressman McMillan's. President Bush wants to be remembered as the Education President, symbolizing the importance of the very work that is being undertaken. Senator Metzenbaum of Ohio is deeply interested in these efforts also. The tragic story of Dexter Manley must not be repeated and this is only one example.

I thank the Committee for this opportunity and I look forward to the chance to appear before Congressman Henry's forum personally at a suitable date in the future.

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President
BARBARA R. BERGMANN
American University

General Secretary
ERNST BENJAMIN

May 30, 1991

Statement Submitted by Professor Robert F. O'Neil to the House Education and Labor Subcommittee on Postsecondary Education

Hearing on "College Athletics Financial Disclosure and Public Accountability"

Professor O'Neil is Professor of Law at the University of Virginia and General Counsel of the American Association of University Professors

I welcome the opportunity to comment briefly on legislation proposed to address fiscal and operational integrity in intercollegiate athletics. These are surely not easy times for university athletic programs. There has been unprecedented attention to these issues from the media, from several levels of government, from governing boards, and of course from within the college athletic world itself. The recent release of the report of the Knight Commission attests to the exceptional importance the academic community itself today attaches to these issues -- and the urgency with which we seek solutions.

The question before you is whether Congress ought to add its mandate to those of others. However urgent and critical you believe to be the problems of fiscal integrity and accountability, I would urge great caution before adding federal standards to a field that is increasingly regulated by others. At least it would seem wise to wait long enough to see what effect these other controls may have, before concluding that Congress need step in with a uniform set of national federal standards.

The National Collegiate Athletic Association itself has dramatically increased its oversight of financial matters. The rules adopted several years ago add many new requirements -- notably the mandate by which every president or chancellor must receive and review an annual audit of the athletic program and of alumni or other groups which provide financial support to the athletic program. From my own experience as an university president at the time this rule took effect, I can assure you the level of information and attention increased dramatically. We do demand the audits, we receive them promptly, and we read them with care. We also are now in a position to keep our governing boards informed of financial issues in the athletic program, to a degree that seldom was possible at most institutions in the past -- and was not required by NCAA or conference rules.

There has also been much greater concern on the part of regional accrediting associations. The Southern Association of Colleges and Schools recently added intercollegiate athletics to the areas about which a visiting team must have information, and to which its attention must be given in every review. While of course no institution has yet been denied accreditation for this reason, such a sanction is apparently now possible for the first time in the history of regional accreditation. Here, too, is a major new approach that ought to be given time enough to work before deciding that Congress must intervene. Clearly the accrediting community has begun taking to heart the challenge of athletics, and has concluded that it has a role to play in reform.

There are other major efforts in process. You are well aware of the recommendations of the Knight Foundation Commission, co-chaired by former University Presidents William Friday and Theodore Hesburgh. The commission several weeks ago released a report with a number of important and timely proposals, most of which will need time for study and implementation. Many of those proposals respond to the concerns that underlie the legislation now before you.

Finally, I would note that the American Association of University Professors, of which I am General Counsel, has recently issued a report and proposed policies on athletic matters – a bold and novel initiative for a group historically concerned with faculty rights and responsibilities. After the February meeting of the Association's Executive Committee, the report was made public and received considerable attention in the higher education press. Two paragraphs give special attention to matters of finance. By quoting those two paragraphs, if I may, I would hope to convey to the subcommittee a sense of the concern and the conviction of a major national organization of college and university faculty:

> Financial operations of the department of athletics, including all revenues received from outside groups, should be under the full and direct control of the central administration of the campus. Complete budgets of the athletic department for the coming year and actual expenditures and revenues for the past year should be published in full detail. Annual budgets, as well as long-term plans should be approved under the regular governance procedures of the campus, with input from elected faculty representatives.
>
> Particular scrutiny should be given to use of the institution's general operating funds to support the athletic department. Institutions should establish regulations governing the use of and fees for university facilities by private businesses, such as summer athletic camps. Fees charged to coaches should be assessed on the same basis as those charged to faculty and other staff engaged in private businesses on campus. Published budgets should include an accounting of maintenance expenses for sports facilities, activities of booster groups, payments by outsiders for appearances by coaches and other athletic staff, payments by sports apparel companies, and sources of scholarship funds.

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President
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AAUP STATEMENT ON INTERCOLLEGIATE ATHLETICS

Adopted by the AAUP Executive Committee, February 18, 1991

PREFACE

Concern about pervasive abuses in intercollegiate athletics is widespread both in higher education and in the community at large.

We solicit comments both on the substance of this statement of the problem, and on the format that would make it appropriate for adoption by faculty senates and similar bodies as an expression of desired policy for their institutions.

INTRODUCTION

On many campuses the conduct of intercollegiate athletic programs poses serious and direct conflicts with desired academic standards and goals. The pressure to field winning teams has led to widely publicized scandals concerning the recruitment, exploitation, and academic failures of many athletes.

Expenditures on athletics may distort institutional budgets and can reduce resources available for academic functions. Within some academic programs faculty members have been pressured to give preferential treatment to athletes. Coaches and athletic directors are themselves often trapped in the relentless competitive and financial pressures of the current system, and many would welcome reform.

Not all institutions have problems with athletics of the same type or to the same degree. Nevertheless, we believe that all colleges and universities would benefit from the adoption of a national set of standards that would protect athletes from exploitation and get expenditures on and administration of athletic programs under the regular governance procedures of the institution.

We urge faculty participation in the cause of reform. We urge our administrators to enter into national efforts to establish new standards through the NCAA or other regulatory agencies. We specifically endorse the following proposed reforms and ask faculty colleagues, administrators, and athletic department staff throughout the country to join with us in working to implement them on their campuses, in their athletic conferences, through the NCAA, and nationally:

ADMISSION AND ACADEMIC PROGRESS

1. Institutions should not use admission standards for athletes that are not comparable to those for other students.

2. A committee elected by the faculty should monitor the compliance with policy relating to admission, the progress toward graduation, and the integrity of the course of study of students who engage in intercollegiate athletics. This committee should report annually to the faculty on admissions, on progress toward graduation, and on graduation rates of athletes by sport. Further, the committee should be charged with seeking appropriate review of cases in which it appears that faculty members or administrators have abused academic integrity in order to promote athletic programs.

AVOIDANCE OF EXPLOITATION

3. Students who are athletes need time for their academic work. Participation in intercollegiate athletics in the first year of college is ill-advised. Athletes should have at least one day a week without athletic obligations. Overnight absences on weekday evenings should be kept to a maximum of one per week, with rare exceptions. The number of events per season should be periodically reviewed by the faculty. Student athletes should be integrated with other students in housing, food service, tutoring, and other areas of campus life.

FINANCIAL AID

4. Financial aid standards for athletes should be comparable to those for other students. The aid should be administered by the financial aid office of the institution. The assessment of financial need may take account of time demands on athletes which may preclude or limit employment during the academic year. Continuation of aid to students who drop out of athletic competition should be conditioned only on their remaining academically and financially qualified.

FINANCING ATHLETICS: GOVERNANCE

5. Financial operations of the department of athletics, including all revenues received from outside groups, should be under the full and direct control of the central administration of the campus. Complete budgets of the athletic department for the coming year and actual expenditures and revenues for the past year should be published in full detail. Annual budgets, as well as long-term plans should be approved under the regular governance procedures of the campus, with input from elected faculty representatives.

6. Particular scrutiny should be given to use of the institution's general operating funds to support the athletic department. Institutions should establish regulations governing

the use of and fees for university facilities by private businesses, such as summer athletic camps. Fees charged to coaches should be assessed on the same basis as those charged to faculty and other staff engaged in private businesses on campus. Published budgets should include an accounting of maintenance expenses for sports facilities, activities of booster groups, payments by outsiders for appearances by coaches and other athletic staff, payments by sports apparel companies, and sources of scholarship funds.

7. Elected faculty representatives should comprise a majority of the campus committee which formulates campus athletic policy, and such a committee should be chaired by an elected faculty member.

CONFLICTS OF INTEREST

8. Paid-for trips to games, and other special benefits for faculty, administrators, or members of governing boards involved in the oversight of athletics, whether offered by the university or by outside groups, create conflicts of interest and should be eliminated.

IMPLEMENTATION

9. In order to avoid the obstacles to unilateral reform efforts, the faculty believes its chief administrative officer should join with counterparts in other institutions to pursue these reforms and report annually to the academic community on the progress of such efforts.

10. Beginning five years from adoption of these principles at an institution, athletic events should be scheduled only with institutions, and within conferences and associations, that commit themselves to the implementation of these principles.

* * * * * * * * *

Institutions should redouble their efforts to enroll and support academically able students from disadvantaged backgrounds regardless of their athletic ability. Athletic programs never should have been considered as a major way of supporting students from disadvantaged backgrounds in institutions of higher education. If these recommendations are adopted, athletes who lack academic skills or interests will no longer be enrolled, and some of those excluded will be from such backgrounds. In the interest of such athletes, institutions and the NCAA should avoid regulations that interfere with the formation of other channels of entry for these athletes into professional athletics.

3/5/91

Mrs. LOWEY. Mr. Geiger and Dr. Sperber, your entire statements will be entered into the record if you care to summarize. And we'll begin with Mr. Geiger. Thank you.

STATEMENTS OF FERDINAND A. GEIGER, ATHLETIC DIRECTOR, UNIVERSITY OF MARYLAND, COLLEGE PARK, MARYLAND; AND MURRAY SPERBER, PROFESSOR OF ENGLISH, INDIANA UNIVERSITY, BLOOMINGTON, INDIANA

Mr. GEIGER. Thank you, Madam Chair, Congressman Henry.

My name is Andy Geiger. My name is Andy Geiger. I am Director of Athletics at the University of Maryland, College Park. I appreciate the opportunity to appear today on behalf of the National Collegiate Athletic Association.

With reference to the general issue before the subcommittee, college athletics financial disclosure and public accountability, the NCAA believes that the dominant responsibility for such disclosure and accountability is and should be to the institutions chief executive officer and its board of trustees or regents.

Thus, NCAA regulations require that budgeting for intercollegiate athletics be controlled by the institution and subject to its normal budgeting procedures, and that the chief executive officer of the institutions or his or her designee from outside the Athletics Department approve the annual budget.

NCAA regulations also require, except with reference to the smallest programs, that an independent audit of intercollegiate athletics expenditures be conducted on a regular basis annually in the case of Division I institutions, and every 3 years in the case of Division II institutions. These provisions are designated to assure that the institutional CEO and trustees are in a position to determine what role intercollegiate athletics is to play in institutional life.

It is safe to say that my institution, the University of Maryland, the Atlantic Coast Conference, of which it is a member, and the NCAA membership believe that this determination is most appropriately made by those individuals and not by the Federal Government or the public at large.

The legislative proposal offered last year to require publication of financial data was said to represent an aid in determining the proper role of college sports. The fact is, however, that significant public data already exists as to the revenues and expense in intercollegiate athletics programs. For several years, this data has been collected and reported by Dr. Mitchell Raiborn, a professor of accounting of Bradley University.

Dr. Raiborn's most recent study, covering the years from 1981 through 1989, provides specific data for each NCAA division as to revenues and expenses of institutional programs, broken down between men's sports and women's sports, and further broken down in the case of men's sports to separately account for football and basketball.

The NCAA membership finds it difficult to understand what advantages are to be gained by requiring an annual per-sport audit of revenues and expenses as proposed under H.R. 2433. Such an approach obviously radically increases the detail necessary for defining proper allocation of individual items of revenue and expense, and the potential for distortion is similarly heightened.

Quite frankly, however, the NCAA is less concerned by the details of an institutional accounting method than it is by the view that legislation such as the bill now being proposed is necessary in order to deal with the various issues involved in the adminstration of intercollegiate athletics in 1991. The NCAA membership simply does not agree and believes that events of the last several months demonstrate that the education community has both the will and the capacity to accomplish serious reform of the intercollegiate athletic system without the necessity of Federal involvement.

The fact is that a carefully prepared process of redirection of intercollegiate athletics was seriously begun at the January 1991 convention under the leadership of the NCAA President's Commission, a 44-person body of institutional CEOs enjoying significant powers under the NCAA's organic documents.

The Commission designed and brought to the convention an integrated reform package involving reductions in permitted recruiting activities, phasing out of athletic dormitories, limiting the number of coaches for Division I sports, cutting back the number of permissible grants and aids to student athletes, and reducing permitted athletics time demands on student athletes. All of the Commission's reforms were overwhelmingly adopted, in major part because the Commission vigorously lobbied its proposals to CEOs throughout the NCAA membership.

Detractors have suggested that Presidential interest will now wane and that the 1991 Convention will prove to be aberrational. It is obvious that the President's Commission does not plan to permit this to happen because it has already begun serious work on its proposals, this time with reference to tighten admissions and, its satisfactory progress, academic standards for student athletes for the 1992 Convention this coming January.

The NCAA membership submits that although not all people within and without the education community will agree as to the appropriate role for intercollegiate athletics in the postsecondary education process, most will agree that the proper group to decide this issue in its various complicated aspects is that comprised of the institutional chief executives, themselves.

The process of redefining that role for at least the balance of this century is now well underway under the leadership of the NCAA's President's Commission. And the NCAA memberships invites close scrutiny of this process both by this subcommittee and the public. The NCAA doubts seriously, however, that passage of H.R. 2433 will contribute in any significant way to the success of the process.

The final recital to H.R. 2433 states that per-sport revenue expense data would be helpful in assuring institutional control of intercollegiate athletics programs. As stated earlier, that assurance already exists, pursuant to specific mandates of the NCAA regulations.

[The prepared statement of Ferdinand A. Geiger follows:]

For Release 9:30 A.M.
May 30, 1991

STATEMENT OF FERDINAND A. GEIGER

on behalf of

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

before the

SUBCOMMITTEE ON POSTSECONDARY EDUCATION

of the

COMMITTEE ON EDUCATION AND LABOR

May 30, 1991

My name is Andy Geiger. I am Director of Athletics at the University of Maryland, College Park. I appreciate the opportunity to appear here today on behalf of the National Collegiate Athletic Association, of which my institution is a member. Prior to taking my current position at Maryland, I was Director of Athletics at Brown University and the University of Pennsylvania, and most recently at Stanford University. I have served for several years on various NCAA Committees, including most recently its Men's Basketball Committee.

The NCAA is an unincorporated association of approximately 1100 members, over 800 of which are four-year colleges and universities. The Association is dedicated to the promotion and regulation of intercollegiate athletics. The member institutions of the NCAA, acting in annual convention, adopt the substantive rules for the conduct of intercollegiate athletics and for operation of the association itself. Contrary to popular belief, the nation's colleges and universities are the NCAA.

The NCAA understands the focus of there hearings to be the issue of "college athletics financial disclosure and public accountability", but that its views are also more specifically sought on H.R. 2433, a bill which would require institutions awarding athletically-related financial aid to cause an independent annual audit to be conducted of the per-sport revenues and expenses of its intercollegiate athletics program, and to make that audit data available to the federal government and the public.

As the Subcommittee is aware, the NCAA membership opposed a fundamentally similar proposal last year. In the "right-to-know" legislation ultimately adopted by the Congress, that proposal was dropped in favor of a mandate to the Secretary of Education to study and report on the feasibility and desirability of requiring production of this per-sport revenue/expense data. To the knowledge of the NCAA, that report is still in the process of preparation.

With reference to the general issue before the Subcommittee -- college athletics financial disclosure and public accountability -- the NCAA believes that the dominant responsibility for such disclosure and accountability is and should be to the institution's chief executive officer and its board of trustees. In the case of state-supported institutions, this responsibility will obviously also extend to the state legislature.

Stated otherwise, the NCAA members believes that responsibility for disclosing and justifying operational results of the intercollegiate athletics program is identical to and coextensive with the same requirements for every other institutional program. The fact that a segment of the American public often appears to have a greater interest in this aspect of institutional affairs does not provide, in the NCAA's view, the basis for suggesting that the chief executive's and trustees' authority is any greater, or any lesser, than with respect to all other institutional programs.

As to intercollegiate athletics, the NCAA's member institutions have adopted a number of rules designed to reinforce this authority on a common basis. Thus, NCAA regulations require that budgeting for intercollegiate athletics be controlled by the institution and subject to its normal budgeting procedures, and that the chief executive officer of the institution (or his designee from outside the athletics department) approve the annual budget. NCAA regulations also require, except with reference to the smallest programs, that an independent audit of intercollegiate athletics expenditures be conducted on a regular basis -- annually in the case of Division I institutions and every three years in the case of Division II institutions.

Also noteworthy in this general regard is the NCAA requirement that every five years, member institutions must conduct a comprehensive self-study and evaluation of their intercollegiate athletics programs, covering such topics as CEO control, finances, personnel, recruiting, services for student-athletes, and sports programs. On request, this evaluation must be made available to the NCAA. This self-study requirement is regarded by many individuals as a necessary preliminary to a program of institutional certification, scheduled to be considered by the 1992 Convention.

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All of these provisions, put into place by the NCAA member institutions themselves, are designed to assure that the intercollegiate athletics program is operated as an integral part of the institutional structure, that the CEO and trustees are presented with full and accurate data concerning that program, and that these institutional managers are in a position to determine what role that program is to play in institutional life. It is safe to say that my institution -- the University of Maryland -- the Atlantic Coast Conference and the NCAA membership believe that this determination is most appropriately made by those individuals, and not by the federal government or the public at large.

The legislative proposal on this subject offered last year was said to represent an aid in determining the proper role of college sports. The fact is, however, that significant data -- made publicly available at the initiative of the NCAA itself and at its expense -- already exists as to the revenues and expenses of intercollegiate athletics programs. For several years, this data has been collected and reported by Dr. Mitchell Raiborn, a professor of accounting of Bradley University. Dr. Raiborn's most recent study, published just seven months ago and covering the years from 1981 through 1989, provides specific data for each NCAA Division as to revenues and expenses of institutional programs, broken down between men's sports and women's sports and further broken down, in the case of men's sports, to separately account for football and basketball.

In general, the Raiborn study -- which is based upon voluntary responses from about 57% of the NCAA membership -- shows that on the average, institutions in all NCAA Divisions except I-A have operated at increasingly large deficits over the course of the decade; Division I-A institutions (in general the largest institutions) on average have shown a modest operating profit. Institutional trustees and CEOs are only too aware of this data, and for this reason, a major emphasis of recent NCAA Conventions have indeed centered on cost-reduction proposals.

H.R. 2433 differs from the provision reported by the Subcommittee last year in that it no longer appears to contemplate collection of per-sport institutional revenue/expense reports by the Secretary of Education and compilation of that data for public consumption. This change appears designed to meet the argument that such a program would require the expenditure of undue amounts of federal funds on an ongoing basis. The proposal nevertheless contemplates that the annual audit will be conducted in accordance with federal "guidelines" -- suggesting that the necessary accounting system for performing the audits will be defined by the government.

Dr. Raiborn, who collects revenue and expense data on a confidential basis from individual institutions, provides only the most limited definition of "revenue" and "expenses" in his report, and makes no effort, for example, to specify how to allocate various types of overhead expenses among individual sports nor how to account for institutional contributions, e.g., campus security, admissions processing, etc. to the intercollegiate program. I believe that unless a uniform system of revenue and expense accounting is devised, significant disparities in accounting methods will exist, with the result that comparisons of institutional data -- particularly per sport comparisons -- will be inaccurate and even unfair. Without doubt, creation and monitoring of this accounting system will require substantial federal input and expense.

Expense to the federal government will of course be modest in comparison to that which will be incurred on an incremental basis by those institutions covered by the proposal: not only need they devote staff time throughout the year to calculation of revenues and expenses, including overhead, on a per-sport basis (a requirement not appearing in NCAA budgeting and auditing regulations), they must then pay the professional fees of an independent auditor to prepare the required report on that basis.

The NCAA estimates roughly that it has already devoted at least $50,000 in staff time to preparing the necessary forms for compliance by its members with the 1990 "right-to-know" graduation rate legislation (calculation of almost 1,100 different entries is required to complete the form); it further estimates that each institution will require half the time of one additional staff person to develop and report the necessary data each year -- an aggregate annual cost for its Division I and II members of some $750,000. If the current proposal is passed, an even more comprehensive set of institutional staff calculations will be required.

The NCAA membership finds it difficult to understand, moreover, what advantage is to be gained by requiring an annual per-sport audit of revenues and expenses. Such an approach obviously radically increases the detail necessary for defining proper allocation of individual items of revenue and expense, and the potential for distortion is similarly heightened. The Raiborn study already provides significant summary data as to the two "major" men's sports and as to women's sports as a whole; what serious social objective is met by requiring allocation by each of thirty or forty sports does not readily appear, especially when one considers the additional expense which would necessarily be involved.

Quite frankly, however, the NCAA is less concerned by the details of an institutional accounting method than it is by the view, apparently held by some Members of Congress, that legislation such as the bill now being proposed is necessary in order to deal with the various issues involved in the administration of intercollegiate athletics in 1991. The NCAA membership simply does not agree, and believes that events of the past several months demonstrate that the education community has both the will and the capacity to accomplish serious reform of the intercollegiate athletics system, without the necessity of federal involvement.

The fact is that contrary to the claims of those who last year were not really paying attention to what was happening within higher education, a carefully-prepared process of redirection of intercollegiate athletics was seriously begun at the January 1991 Convention under the leadership of the NCAA Presidents Commission -- a 44-person body of institutional CEOs enjoying significant powers under the NCAA's organic documents. After extensive consultation among themselves and with various formal and informal elements of the intercollegiate athletics structure, the Commission designed and brought to the Convention an integrated reform package involving reductions in permitted recruiting activities, phasing out of athletic dormitories, limiting the number of coaches for Division I sports, cutting back the number of permissible grants-in-aid to student-athletes, and reducing permitted athletics time demands on student-athletes.

All of the Commission's reforms were overwhelmingly adopted -- in major part because the Commission vigorously "lobbied" its proposals to CEOs throughout the NCAA membership, with the result that almost 30% of the CEOs were in actual attendance, and many more had instructed institutional delegates as to how to vote on the Commission proposals. In short, the Commission mobilized institutional chief executives -- who under NCAA rules have always had the power to determine institutional votes -- and persuaded them as to the wisdom of the Commission's package of reforms.

In an editorial appearing shortly after the 1991 Convention, the Chicago Tribune commented:

> "What was expected to be a nip-and-tuck contest [at the 1991 Convention] between the forces of reform and defenders of the status quo quickly became a rout . . . .
>
> The results are enough to make even a hardened cynic believe that college sports really may be ready for reform.
>
> * * * *

> As important as they are in their own right, the proposals adopted at Nashville are significant because they say who is in charge. And that, finally, is who ought to be: the chief executives."

Detractors have suggested that presidential interest will wane, and that the 1991 Convention will prove to be aberrational. It is obvious that the Presidents Commission does not plan to permit this to happen, because it has already begun serious work on its proposals -- this time with reference to tightened admission and satisfactory progress academic standards for student-athletes -- for the 1992 Convention. The Commission is fully aware of the ongoing need to involve all elements of the intercollegiate athletics community in the process by which its proposals are drafted, and it would be a mistake to assume that the Commission intends to slacken its efforts directly to involve institutional CEOs. Without doubt, moreover, the recently published report of the Knight Commission -- highly supportive of direct involvement of institutional CEOs in the reform process -- will aid the Presidents Commission in its efforts.

The NCAA membership submits that although not all people within and without the education community will agree as to the appropriate role for intercollegiate athletics in the postsecondary education process, most will agree that the proper group to decide this issue in its various complicated aspects is that comprised of the institutional chief executives themselves. The process of redefining that role for the at least for the balance of this century is now well underway under the leadership of the NCAA President's Commission, and the NCAA membership invites close scrutiny of this process both by this Subcommittee and the public.

The NCAA doubts seriously, however, that passage of H.R. 2433 will contribute in any significant way to the success of the process. The final recital to H.R. 2433 states that per-sport revenue/expense data would be helpful in assuring institutional control of intercollegiate athletics programs. As stated earlier, that assurance already exists pursuant to specific mandates of the NCAA regulations, and it is hard to see how putting institutions to the trouble and significant expense of a further, per-sport audit will add to the Association's existing requirement of institutional control.

Mrs. **Lowey**. Thank you.

Dr. Sperber?

Mr. **Sperber**. Thank you, Madam Chair.

One of the best kept secrets about intercollegiate athletics, well-guarded because athletic departments are extremely reluctant to open their financial books, is that in spite of the huge amount of revenue from ticket sales and T.V. rights fees, most athletic departments lose money.

If profit and loss is defined according to ordinary business practices, the 803 belonging to the NCAA, the 493 of the NIA, and the over 1,000 junior colleges, only 10 to 20 make a consistent albeit small profit, and in any given year another 20 to 30 break even or come close. All of the rest, over 2,300, lose anywhere from a few dollars to millions, annually, on college sports.

Thus, the myth that college sports is immensely profitable for the schools that supply the teams is false. And the corollary that the money earned from this enterprise helps other parts of the university is clearly untrue. All of the revenue that athletic departments generate stays in their cash drawer and at the end of the year when the drawer is empty, they take money from other parts of their colleges and universities, usually from the general operating fund. Thus, dollars that could go for educational purposes disappear down the college sports deficit hole.

Don Tyson, chairman of Tyson Foods and a member of the State of Arkansas Higher Education Committee, put the matter succinctly when he commented on the multi-million dollar athletic department deficits in his State, "We've got the deal spotted. If athletic departments don't get enough money, they steal it out of the education budget."

Why we're here today and why Representative Henry introduced his bill is that fact that ascertaining the exact amount of red ink in college sports is extremely difficult. Because athletic departments are often autonomous or semi-autonomous units with little real supervision by university officials, they can erect iron curtains around their operations. Even at public universities, where no legal justification exists for their secrecy, they will not reveal their true financial situation.

One university researcher on this subject said, "When I went after athletic department books at public universities, even though I clearly have the State Freedom of Information laws on my side, it was always me and my lawyer and very shallow pockets against the athletic department and the universities' lawyers and very deep pockets. I was told by one school that they would fight me to the State Supreme Court rather than open their athletic department books."

And I know in my own research, this has certainly been the case. Although, Mr. Geiger points out on the NCAA books, there are various recommendations for financial disclosure, in no way are these public, in no way did the Night Report endorse this, and that, in fact, is the crux of the matter it seems to me. Thus, only the most tenacious newspaper reporters and academics have been willing to search for the facts. And only those newspapers such as USA Today, who can afford the legal costs, have been in any way successful.

In addition, because athletic departments use creative accounting methods to remove as many expenses as possible from their books, they are adept at concealing millions of dollars of losses. Their real annual deficits are much more extensive than the NCAA and individual athletic directors admit, and reading their financial books requires an expertise that most investigators lack.

Some people are pessimistic about Federal legislation being possible in this area because of the statistical problems in comparing the finances of various kinds of athletic departments as well as the finances of the universities that house them. Although the pessimists make a number of good arguments from a statistical point of view, I disagree with their complaints and I very much applaud the attempts by Representative Henry and others to get athletic departments to disclose their financial operations.

Obviously, athletic departments will do their books in a number of different ways, but if the public and the press has access to the books, then the athletic departments will have to explain and justify their accounting procedures such as moving maintenance and debt servicing costs off of their books and on to the universities'.

The main point is to open the books and to allow the public to decide what it wants to do with what it finds. The best legislation now, beyond disclosure, would be taxing as unrelated business income, broadcast rights fees and booster donations as well as closing the priority seat tax loophole. But the emphasis on disclosure should not be obfuscated by statistical jargon and complaints.

Let me say in conclusion, because the commercial objective and operating methods of big time college sports are totally separate from and mainly opposed to the educational aims of the institutions that house its franchises, the justification for this huge enterprise are increasingly shaky. Moreover, the many tricks and devises that athletic departments use to underwrite their annual deficits prompt questions about their continuing existence.

In an era when the academic units of most colleges and universities are begging for money, when classroom buildings and research labs are falling apart, when tuition and other student costs rise exponentially, when graduate teaching assistants are not paid a living wage or faculty commensurate with their professional skills, does it make sense to throw needed money down the athletic department deficit hole?

And in the 1990s, because of the increasingly expensive athletics arms race and in spite of the infusion of T.V. dollars into the NCAA and individual schools, these deficits will increase. College sports is undergoing systemic failure and only major surgery can save the patient. Representative Henry's bill is an important first step in the process, and I urge the Congress to adopt it.

In conclusion, just to very briefly add to Mr. Geiger's comments, the NCAA, which really began in the first decade of the century, has never been able to reform college sports. I think finally you're having a movement on the part of faculties and the public informed by the press and as well as within the Congress to bring reform to college sports. So it seems to me that the greatest aid to this movement is full disclosure.

Representative Henry's bill is not a radical bill. All it asks is disclosure in many cases of public universities or universities that receive public funds, so I very much endorse it.

Thank you for inviting me and I would be very happy to answer any questions.

[The prepared statement of Murray Sperber follows:]

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May 20, 1991.

Representative William D. Ford,
Chairman,
Subcommittee on Postsecondary Education,
Committee on Education and Labor,
United States House of Representatives,
Washington, D.C. 20515.

Dear Representative Ford,

Thank you for asking me to present my views on college athletic financial disclosure and public accountability.

Some people are pessimistic about federal legislation being possible in this area because of the statistical problems in comparing the finances of various kinds of athletic departments as well as the finances of the universities that house them. Although the pessmists make a number of valid arguments from a statistical point of view, I disagree with their complaints and I very much applaud the attempts by Rep. Paul Henry and others to get athletic departments to disclose their financial operations. Obviously, athletic departments do their books in many different ways but if the public and the press has access to the books, then the athletic departments will have to explain and justify their accounting procedures--such as moving maintenance and debt-servicing costs off their books and onto the university's.

The main point is to open the books and to allow the public to decide what it wants to do with what it finds. The best legislation now, beyond disclosure, would be taxing as unrelated business income, broadcast rights fees and booster donations as well as closing the priority seat tax loophole. But the emphasis on disclosure should not be obfuscated by statistical jargon and complaints.

Page Two

Representative William D. Ford

I enclose a long excerpt from an article that I just wrote for the *Gannett Media Journal* at Columbia University (it will appear in the summer issue of the journal), that outlines the basic problems in athletic department financing and the reasons why full disclosure of their financial books is imperative.

Yours sincerely,

Murray Sperber

Murray Sperber,
Associate Professor of
English & American Studies,
Indiana University.

"You can probably count on your two hands the number of athletic departments that actually have a surplus annually."
--Dick Schultz, executive director of the NCAA.

One of the best kept secrets about intercollegiate athletics--well-guarded because athletic departments are extremely reluctant to open their financial books--is that in spite of the huge amount of revenue from ticket sales and TV rights fees most athletic departments lose money. If profit-and-loss is defined according to ordinary business practices, of the 803 members of the NCAA, the 493 of the NAIA, and the over 1,050 junior colleges, only 10-20 athletic programs make a consistent albeit small profit, and in any given year, another 20-30 break even or come close. All of the rest--over 2,300--lose anywhere from a few dollars to millions annually on college sports.

Even the NCAA acknowledges the poor financial health of college sports. Its most recent study on this topic, The Revenues and Expenses of Intercollegiate Athletic Programs, polled member athletic departments and reported that the vast majority lost money. For example, the University of Michigan's athletic program in 1988-89, in spite of a consistently sold-out 101,700 seat stadium and victories in the Rose Bowl and in the NCAA men's basketball tournament--earning $3.5 million from these events--ended the year $2.5 million in the red and projected a $5.3 million annual deficit for the early 1990's.

Thus the myth that college sports is immensely profitable for the schools that supply the teams is false, and the corollary that the money earned from this enterprise helps other parts of the university is clearly untrue. All of the revenue that athletic departments generate stays in their cash drawer and, at the end of the year, when the drawer is empty, they take money from other parts of their colleges and universities, usually from the General Operating Fund. Thus dollars that could go for educational purposes disappear down the college sports deficit hole. Don Tyson, Chairman of Tyson Foods and a member of the State of Arkansas Higher Education Committee, put the matter succinctly when he commented on the multi-million dollar athletic department deficits in his state, "We've got the deal spotted. If they [athletic departments] don't get enough money, they steal it out of the education budget."

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Ascertaining the exact amount of red ink in college sports is extremely difficult. Because athletic departments are often autonomous or semi-autonomous units with little real supervision by university officials, they can erect "Iron Curtains" around their operations. Even at public universities, where no legal justification exists for their secrecy, they will not reveal their true financial situation. One university researcher on this subject said, "When I went after athletic department books at public universities, even though I clearly had the state freedom of information laws on my side, it was always me and my lawyer and very shallow pockets, against the athletic department and the university's lawyers and very deep pockets. I was told by one school that they would fight me to the state supreme court rather than open their athletic department's books."

Thus only the most tenacious newspaper reporters and academics have been willing to search for the facts, and only those newspapers such as USA Today, who can afford the legal costs, have been consistently successful. (In 1986, USA Today did a very comperehensive survey of college football and basketball coaches' salaries, perks, deals, and financial scams, and set in motion a number of academic studies of this problem.)

In addition, because athletic departments use "creative accounting" methods to remove as many expenses as possible from their books, they are adept at concealing millions of dollars of losses. Their real annual deficits are much more extensive than the NCAA and individual athletic directors admit, and reading their financial books requires an expertise that most investigators lack.

If a reporter is serious about examining athletic department finances, the first item to study is the most obvious and the most overlooked. The immediately visible symbols of college sports are its huge stadiums and arenas; ironically, the most significant hidden cost in intercollegiate athletics is the financing and maintenence of these facilities. Very few schools build a stadium or an arena with cash up front; once the money is borrowed, someone has to pay the interest charges and try to retire the debt, and that someone is usually the students in the form of mandatory annual fees. At most state of Virginia schools, for example, each student pays at least $100 a year--often placed in the innocuous appearing "Activity Fees" item on the student's bill--for debt-servicing and other athletic department expenses. In most cases, the students are unaware that they are paying part of the athletic department's bills by means of this hidden tax.

Moreover, because of what the sociologist Harry Edwards terms the "Collegiate Athletics Arms Race," coaches and athletic directors demand state-of-the-art facilities and can never stop spending to acquire them. In the last decade, almost all Big 10 athletic departments built multi-million dollar indoor football practice fields although the legislatures in these rust-belt states frequently cut funding to higher education.

Once the stadiums and other facilities are built, maintaining them is enormously expensive. Football stadiums, used five or six times a year, need special care because of the stress on concrete during cold winters and hot summers. Indoor arenas, weight-rooms, et. al are also costly to maintain. Whenever possible, athletic departments move these maintenance costs off their books and into the "Buildings-and-Grounds" line in the university-wide budget, thus avoiding million dollar-plus bills. Some athletic departments, without informing the public of these financial maneuvers, then claim that they balance their books and reporters dutifully report this "fact." If the press would probe these claims and examine the maintenance and debt-servicing expenses of athletic departments, the reality would amaze them and their readers.

The single greatest expense, however, for athletic programs is personnel. This year, most bigtime athletic departments will pay over $5 million in wages and benefits to their employees (also athletic departments are notorious for their bloated payrolls and nepotism). Schools often absorb a large part of this expense by placing athletic program personnel, including coaches, on regular faculty or staff lines in their budgets, even though few of these people see the inside of a classroom on a regular basis or do any work for the university other than college sports tasks. At state institutions, personnel lines in the budget are public information and schools have to reveal them (often the library reference desk keeps the master list). A reporter armed with a list of an athletic department's coaches and staff--instantly obtained from the department's publicity office--can easily discover their salaries as well as whether they are listed as teaching personnel.

Another multi-million dollar expense often removed from athletic department books are grant-in-aids (athletic scholarships). Athletes are the only group of students recruited for commercial entertainment, not academic, purposes and they are the only students who go through school on grants based on their talent and potential as commercial entertainers, not on their educational aptitude. Nevertheless, the NCAA admits that many athletic departments "that award grant-in-aid to participating athletes do not report these costs as operating expenses" because they are able to get their schools to fund them out of regular student scholarship money or other sources. This financial maneuver becomes particularly pernicious when institutions allow coaches to take Opportunity Grant and other money targeted for needy minority students and award it instead to athletes with minimal SAT scores and little aptitude for college work.

Another grant-in-aid financial trick is the "out-of-state/in-state" shell game. At public institutions, some athletic departments pay tuition for out-of-state athletes at in-state rates, reducing this expense by six figure amounts. Reporters could take the game programs, ascertain the athletes' hometowns, and then ask the university to supply copies of the fee statements for these athletes.

The NCAA also admits that a majority of athletic departments receive "Direct State or Other Government Support" and that at many public institutions with bigtime programs this comes to over $1 million a year. When he was athletic director at the University of Virginia, Dick Schultz told the Richmond Times Dispatch that "A five- to six-million dollar program ought to be able to generate its own revenue without resorting to public funds. Taking state tax money places you in a position of people being able to say you're taking money that could be used for general education." Schultz added, "I know public money is tempting but I like to be able to look professors in the eye." Now that he has become executive director of the NCAA, Schultz has yet to convince the college sports establishment of his position on this issue.

The NCAA acknowledges that "Direct" government subsidies help support intercollegiate athletics. In fact, athletic departments at both public and private colleges receive millions more in indirect subsidies. In the rulings on Temple University's challenge to Title IX, the courts pointed out that Temple's athletic program "benefits from governmental aid to other branches of the university. Federal money to those other branches allows the university to divert other funds to the sports program." Divert seems too mild a verb for what can occur in the various money-laundering schemes used by some athletic programs and compliant university officials.

In similar ways, central administrators cover a huge number of miscellaneous athletic department expenses or pass on those costs to the students : the pharmacy department or the university health service assumes the increasingly expensive drug tests mandated by the NCAA; some of the medical personnel who service the intercollegiate athletes are paid out of health service funds; the athletic department's legal problems are taken care of by the university attorney's office; the telephone bill for recruiting (often a $50,000-plus item) is moved to the university-wide telephone bill; and every other possible expense that an athletic director can convince a central administrator to carry vanishes from the AD's books. If reporters would inquire into these financial maneuvers and inform the people paying these bills--the taxpayers as well as students and their parents--much of this subterfuge might end.

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"Despite the pious half-time pronouncements we see on televised football and basketball games, in which the future of humankind is tied to the missions of universities with bigtime athletic programs, these very programs contradict the fundamental aims of American higher education."
--Richard Warch, President of Lawrence University, Appleton, Wisconsin.

Because the commercial objectives and operating methods of College Sports Inc. are totally separate from, and mainly opposed to, the educational aims of the institutions that house its franchises, the justifications for bigtime college sports are increasingly shakey. Moreover, the many tricks and devices that athletic departments use to underwrite their annual deficits prompt questions about their continuing existence. In an era when the academic units of most colleges and universities go begging for money, when classroom buildings and research labs are falling apart, when tuition and other student costs rise exponentially, when graduate teaching assistants are not paid a living wage or faculty commensurate with their professional skills, does it make sense to throw needed money down the athletic department deficit hole? And in the 1990s, because of the increasingly expensive "Athletics Arms Race" and in spite of the infusion of TV dollars into the NCAA, these deficits will increase. College sports is undergoing systemic failure and only major surgery can save the patient.

The best ally for the reform movement is an honest and active press. National magazines and newspapers, and even a few local ones like the Lexington (KY) Herald-Leader, have exposed some of the recruiting and booster scandals involving various athletes, coaches, and athletic departments. In a number of cases, including the Lexington one, they have won Pulitzer prizes, validating their efforts and the importance of their topics.

But recruiting and booster scandals are a result of the systemic problems in college sports, not the cause. Editors must now assign reporters to investigate the less sexy issue of the finances of athletic departments and expose this root problem. Probably special task forces will be more effective than beat reporters because task force journalists are not beholden to athletic department personnel. In this way the media can shortcircuit the "special interest network" and even expose the ways in which the network's "goals [are] quite different" and generally opposed to "the stated purpose of the university."

William Atchley, a former president of Clemson University and now head of the University of the Pacific, and an administrator with long experience on these issues, summed up the tension between College Sports Inc. and American higher education : "When academics takes a back seat to athletics, you have a problem. You no longer have an institution where people with integrity want to teach, or where people with common sense and good values want to send their children to learn."

Unless American higher education solves this problem, College Sports Inc. will continue to corrupt it, and with increasing speed. The reformers want to derail the athletic department juggernaut. The press should report on this conflict as honestly and fairly as possible instead of riding in the club car of the athletic department's high-speed train.

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Murray Sperber is an Associate Professor of English and American Studies at Indiana University, Bloomington.

Mrs. **Lowey**. Thank you Dr. Sperber.

I'll turn the questioning over momentarily. I just have one brief question for Mr. Geiger. In looking at your statement, you said towards the end that "Most will agree that the proper group to decide this issue and its various complicated aspects is that comprised of the institutional chief executives themselves." Given Dr. Sperber's testimony, I wonder who the "most" is and why should we have confidence that if we conduct business as usual the system will improve?

Mr. **Geiger**. Well, I think my point is that it is not business as usual. I am a reformer in terms of my own direction in college athletics. This is not the first time I have sat with Dr. Sperber. I was, until October 1st of last year, Director of Athletics at Stanford University and disclosed all of our financial information to him and its part of his research for his book. So, not all athletic directors try to hide things.

I think that momentum is under way for reform. I think the President's commission of the NCAA is a very important body. It got off to a good start then faltered somewhat a couple years ago, and is now greatly renewed and had tremendous success in 1991 at the January convention. The Night Commission has come forward and, I think, in its ringing declaration said that control of intercollegiate athletics must rest with the chief executive officers of the universities themselves.

And I think its time to fall in line with that type of thinking and not add Federal legislation at this time which will increase the bureaucratic nature of things but will give encouragement—we need go give encouragement and increase the momentum that has been underway with the CEOs through the President's commission and the Night commission.

Mrs. **Lowey**. Then you don't think the legislation is that appropriate encouragement at this time?

Mr. **Geiger**. I do not think so.

Mrs. **Lowey**. Mr. Coleman?

Mr. **Coleman**. Thank you. Both of you have very good statements and very good perspectives. And as with most things, there are two sides, but it is quite convincing listening to both of you at the same time.

Mr. Geiger, I want to encourage you and your reform efforts. I think the NCAA has finally begun to realize the importance of these issues that Mr. Henry has brought up in this bill and previous bills, because it reflects, I think, a general concern of the public regarding the role of intercollegiate athletics in the context of higher education.

And while all of us are sports fans and enjoy the drama of the sporting events, they do have to be put in their place. And I certainly know the reputation of Stanford and past associations with other universities and the current one too that you hold those same beliefs. And hopefully, the message through you to the NCAA and the presidents and everybody else is to keep on moving along the lines that they have done.

Whether or not it has been spurred by such legislation offered in the past or currently, we don't know, but the fact is that you're doing some things that hadn't been done before that needed to be done.

Regarding the Raiborn study, Dr. Raiborn who made the study on losses, either one of you? When you say it was broken down between the women's and the men's sporting events, I would guess from an observer that the women's sporting events were big losers financially. Is that a conclusion of that study?

Mr. GEIGER. It's one of the conclusions of the study or one of the conclusions you can draw from the study. I have always felt that there are really three segments of an athletics program; men's football and basketball, which are revenue producers, and other men's sports, and other women's sports.

In most athletics programs, when you get beyond football and men's basketball, all of them look about the same in terms of revenue generation.

Mr. COLEMAN. And yet, those are the sports that the student body participates in more than the big time football or basketball; is that true or not? I see one shaking his head no.

Mr. GEIGER. Well, it depends on how your program is structured but at both Stanford and the University of Maryland we had tiers of emphasis of sports. We had some sports in which we were vigorously trying for national championships and fully funding in terms of financial aid and coaching and equipment and all those kinds of things, and others that we were funding at a lesser level which are more opportunities for participation sports. So, there are a variety of ways of doing things.

Mr. SPERBER. Could I——

Mr. COLEMAN. Yes, I do want to hear your answer. But in attributing to a balance sheet, do you attribute within the department those football and basketball expenses, and divide those out, as opposed to the rest of the sports?

Mr. GEIGER. My goal as an athletic director has always been to reinvest in athletics programs and to provide as much athletic opportunity on the campus as we possibly could. Rather than trying to make money for the institution or make money for the athletics department, the first goal, I think, of an athletics program ought to be athletic activity and opportunity for students.

I was an oarsman as an undergraduate, not a revenue producer. I know about participating and practicing in athletics in anonymity. And my experience in athletics changed my life. I had that opportunity at Syracuse University, my alma mater, during the same period of time when the university was national champions in football.

And I'm ever grateful to that university for reinvesting its resources in my sport so that I could have that opportunity to participate in athletics. We were also national champions during that period in our sport, and it meant a great deal to all of us, and for me was a life changing activity.

Mr. COLEMAN. Dr. Sperber.

Mr. SPERBER. Mr. Geiger and I were talking before, and this is the point where we most disagree. Certainly Stanford is a good example. In these nonrevenue sports, baseball, swimming, this whole panoply of nonrevenue sports which, by the way, the NCAA mandates that a school have a certain number in order to play Division

I basketball—14 teams and 7 sports—and they keep raising this number and locking schools into this tremendous cost.

But increasingly these are for elite athletes, and these are not for regular students. And certainly at my own school, Indiana, there are special pools for the swimmers, there are special tracks. If the regular faculty and staff and regular students want to use them, they can't. Increasingly these sports have become minor leagues for very wealthy professional organizations.

Baseball is a good example. Stanford has produced national collegiate baseball teams, and it's also produced a huge number of players in major league baseball. Something like 75 percent of all players in major league baseball today; 60 percent played Division I baseball or NCAA baseball, and the others played junior league baseball.

But major league baseball does not give a cent to the schools. In most cases these programs lose huge amounts of money. A good example is hockey. For instance, 20 percent of the players in the National Hockey League played college hockey. A huge percentage of them were Canadians, recruited from Canada to play here. I called up the National Hockey League and I said how many players in the league played Canadian college hockey? They could only come up with one, Mike Ridley of the Washington Caps.

The answer is that Canadian Colleges don't give full ride athletic scholarships. So, increasingly these sports which began for regular students and are now for elite athletes and serve as minor leagues—I'm all for college sports. I played a lot of intramural sports and club sports.

But what happens when athletic departments lose huge amounts of money is very often they suck money away from these intramural programs and regular student programs. So, it seems to me that of all the areas of college sports that need to be exposed to the public, its these losses which I really feel are most out of control and are most locked in by the NCAA.

Mr. COLEMAN. Do you have an opinion in your studies as to whether or not women's sports are going to be the big losers because they do not produce the revenue that most men's sports do?

Mr. SPERBER. Well, what has happened in women's sports is really interesting. In the early 1970s women's sports were run by an association called AIAW. They were very student based. At first they didn't give athletic scholarships. There were lots of teams that were regular students.

Then in the early 1980s, the NCAA decided to take over the AIAW and put them out of business, and essentially they did. So, increasingly they've turned women's sports into a bad imitation of men's sports. One of the amazing statistics is at the beginning, under the AIWA, over 90 percent of the administrators of women's athletic programs were women, and over 90 percent of the coaches were women.

Now, only a small percentage of administrators are women and, even more amazing, over half the coaches of women's college sports are now men. Because if a male can't get a job with a male team, he will take a job as a women's basketball coach. It's become an entry level position for male coaches.

So, what has happened under the NCAA with the women's programs is they've been turned into elite programs. Now, there are women at Mr. Geiger's former university—Janet Evans who's dreaming of the Olympics—Stanford has provided very good minor league service in women's sports for the USOC, another very wealthy professional organization.

But again, this is at the expense at many schools of regular women's sports programs. It seems to me that it's not simply a matter of the women's teams will suffer, it's the regular students who are suffering.

I mean, you're talking about activities that are for elite athletes, that are of interest to about 5 percent of the entire university community, if you look at their attendance which are very low. And as I said, increasingly, even in the women's sports—the LPGA uses the colleges as a minor league; the ladies' tennis organization.

Mr. **Coleman**. You are obviously using this as one of your arguments, but I don't know that anybody has great concern whether collegiate athletes are successful enough for one to go on to a pro career. I'm not sure that is any reason why we ought to disclose or not disclose revenue.

Mr. **Sperber**. No, I guess maybe I didn't make my argument clear. Should the universities provide minor leagues for these wealthy professional organizations? In football and basketball, there is a historic reason because the college game preceded the NBA and the NFL. But amazingly in these nonrevenue sports, where the professional leagues long preceded the college leagues, the colleges have been turned into minor leagues essentially and at tremendous cost.

I mean, if universities were wonderfully wealthy places and could afford these elite athletic programs, well, fine. But as you know as well as I, universities are rattling the tin cup. Professor/student ratios keep increasing and any number of things. So, I guess, I see it within the university context, and within that context, these programs don't make a lot of sense to me.

Mr. **Coleman**. Mr. Geiger?

Mr. **Geiger**. I have obviously a differing perspective on this. During my tenure at Stanford, the university won 27 NCAA championships in a decade, the most in the country. I believe, in the 1988 Olympics in Seoul, Stanford had more representatives on the United States team than any other university in the country. They were students and they were athletes, and my attitude has been at Brown, at Pennsylvania, at Stanford, and now at Maryland, where I have served all four institutions as director of athletics, is that athletes are by nature interesting people.

They add to the diversity of the community, they add to the life of the campus in a great many important ways. Athletes think in interesting ways, they do things a little bit differently, they're wonderful time managers, they're very creative, innovative, improvisational people because of the nature of their excellence in athletics.

Not all of them are necessarily great students academically, and we all know of colossal failures and concerns that we have in those areas. I think we're attempting to address those kinds of problems. But athletes and athletics are not bad and not evil. Excellent athletes are as valuable to a community in their way as excellence in other kinds of ways, whether it's playing the saxophone or the violin or being a great dramatist or an artist or whatever. I think athletes and athletics are valuable things in a community.

So, I don't see anything wrong with supporting them. I think we're trying to find a system and reform a system so that it's a little bit more comfortable, a little bit more affordable, and a little bit more compatible with life and higher education in the 1990s. I think all of us are on a mission to try to do that. But I don't think athletics inherently are wrong or bad or evil.

I also believe in athletics for all. And I think that there should be a broad base recreationally, I think there should be excellent instruction at the beginning level in colleges and universities for students that wish to learn an athletic skill for life, for life improvement, lifestyle improvement. I think there should be intramural activity for those that are a bit more gifted then that, and I think there should be elite programs for those that are very gifted.

Mr. **Coleman**. I thank you, I know Mr. Henry has a number of questions that he undoubtedly wants to ask and comments he wishes to make. One final comment from me, I think it was good for college athletics that a school like Duke can win the national championship and still graduate well over 90 percent of their athletes. They are outstanding scholars as well as athletes, and are involved in athletics to the degree it should be all about.

A second item, this weekend I enjoyed the exceptional talents of a young musician who was a graduate of the University of Indiana. He is the youngest student ever to be admitted to that institution; he was 12 when that occurred. He now plays professional violin and probably will make some money off of that some day.

So, at least Indiana is not only serving the NBA well. But it also serves some very fine chamber musicians who can go out and graduate from the minor leagues into the majors. I thank both of you for appearing today.

Mrs. **Lowey**. Mr. Henry.

Mr. **Henry**. Thank you, Madam Chair. We've gotten off on a number of tangents that we could disagree or agree on all sorts. Let me make very, very clear to Mr. Geiger I'm not against athletic programs. I have no strongly established positions as to whether or not we ought to treat NCAA Division I programs as minor league sports activities you know, professionalize them or not, that's not my concern in the least.

I just wonder why we can't have the data publicly disclosed. That is really what I would like to focus on, because the only point of the legislation is to establish a uniform data reporting base for institutions on athletic revenues derived and expended by sport.

The reason for that is my belief, first of all, that it's not available—and I'll come back to this—and secondly, believing that some kind of uniform disclosure, publicly disclosed, is the best protection for a reformer such as yourself because of the tremendous pressure you will get, from your alumni association or from the institution's constituencies or whatever, to go around the edge in order to keep up with the other guy because everyone thinks the other guy is doing the same thing.

So, let me start backwards on this and first of all ask you, Mr. Geiger, whether or not you believe it's needed? Is there anything in this bill, in terms of just asking disclosure, which is intrusive on the governance of a higher educational institution?

Mr. **Geiger**. I don't think, per se, that it's intrusive on the governance. My concern about it is that it is one more step that we all have to take that I think is perhaps unnecessary.

Mr. **Henry**. We'll come back to that later, but I just——

Mr. **Geiger**. We have a requirement now in the State of Maryland that I applaud that the Board of Regents passed this year that all of the institutions in the State of Maryland system, University of Maryland system report annually to the Regents in a prescribed way. In the university system in Maryland there are common accounting systems. We all understand the bases in which the report is being made, and it's very clear as to what we're doing.

I don't wish to sound like somebody who may be typically trying to obfuscate this thing, but accounting procedures from institution to institution, State to State, public versus private, all of those kinds of things are very different, one from the other.

I've just finished revamping the accounting system in the Maryland system to make it more precise and more clear as to what our per sport expenditures are and how we are, indeed, able to analyze long range forecasting and other kinds of things in our own system. But ours is very different from others in the Atlantic Coast Conference, because I've tried to compare them.

There have been other things that have been done. The NCAA has come forward with graduation rate disclosure forms. Here is a 90-page form that takes considerable amount of time and effort to do. It's a good idea to disclose graduation rates. I'm not opposed to it. I certainly hope that ours at Maryland will improve, and I'm not afraid to disclose them. But the weeks of time it takes to prepare just this part of the right to know aspect of this thing is amazing to all of us.

And we would like to continue reforming along this way in ways that the NCAA understands, knows how to do, continue to expand Dr. Raiborn's work and work within the NCAA and within the reform that's already underway, under the direction of our CEOs. We just think that's a better way to go.

Mr. **Henry**. Thank you. The reason I wanted to ask the question is that I want to establish that my objective here is not, in any way, to become intrusive into the governance of a university.

Now, to Dr. Sperber, Mr. Geiger tells us in his testimony, or certainly infers, that sufficient data already exists. And I'm wondering if you would address the issues to whether or not a CEO or a board of trustees, a college president or a board of trustees, in fact has access to all the data that typically large NCAA Division I athletic program—do they, themselves, have the data?

Mr. **Sperber**. I think, well, yes. They can get the data, although there's a tendency by CEOs to delegate this to a vice president of a university who—and if the athletic department is not involved in any scandals that hit the newspapers, I think most CEOs would rather not examine this problem because they know this is a very emotionally charged area and involves the public and the press.

I think the real problem, though, if you go a step beyond the trustees and the CEOs is that the NCAA says that every member has to have a faculty athletics committee, a committee that's supposedly in charge. If you notice when the NCAA gives penalties they talk about, "This school did not have institutional control of its athletics program." And this athletics committee is supposed to be one of the main instruments of institutional control.

Well, in my research, one of the things that amazed me is I found almost a handful of faculty athletic committees that got to see the financial books of their athletic department. Now these committees historically have often been rigged by the athletic department in conjunction with the CEOs, and they tend not to be representative faculty members. They tend to be faculty who are very infatuated with college sports who also get tickets to the games, are often on the charter flights, go to the ball games, and such, so they have a tremendous conflict of interest.

But even in just asking the straight up question, "Did you see the books? Can you see the books?" And over and over again, they don't get to see the books. They get to see the budget at the beginning of the year, and in many cases they didn't even get to see that. And the budget, as Mr. Geiger can attest, because of the nature of college sports, is very conjectural. You don't know how many people are going to come. You don't know how many games you're going to win, if you're going to go to a ball game, or whatever.

So the idea that beyond a very small number of people, the presidents and the trustees who actually could have access if they chose to use it, no one else really gets access, even these faculty athletic committees. And if you go beyond that, regular faculty members can't get access. And of course the press has used to use the Freedom of Information laws.

So I guess my own attitude is, maybe, simpleminded, but they say, "Well, we have nothing to hide." Well, okay, open the books. At many universities right now the faculty salary lists are on deposit in the library.

If you go, at my school or any school in my State, a public institution, if you go to the library reference desk and you say, "I'd like to see the salary list," they'll go and they'll hand it to you. They'll hand you departmental lists. They'll hand you any number of university financial books. But if you go and ask to see the athletic department books, they're very edgy about this and it's almost impossible.

Now, I congratulate Mr. Geiger. In my research, Stanford, which is a private institution and did not have to open its books, was very forthcoming, was astoundingly forthcoming. But I think one of the reasons there is the University has had tight control of college athletics and the administration, not simply the president but various administrators, look at those books very carefully. The faculty athletics committee input in such.

Stanford in a way is a model for the rest of this country, and, ironically, it's a private university. But then again, universities that receive public monies, where they're private or public, I think should be also open their books.

So I think you're asking for minimal stuff. I find it hard to believe that there's any controversy in this. It makes me very suspicious of the NCAA which claims it wants to reform college sports to do this very minimal step. They have to do their books anyway, just say, "Okay, Cleveland Plain Dealer, you want to see Ohio State's books? They're in this place. Come and see it," or, "Professor X, you're a researcher, you want to see it. Come and see it." And I don't think it will take any great time.

Now, with the graduation statistics, the NCAA likes to present them their way, and maybe that takes a little bit of time. But I've worked with the NCAA academic reporting forms. It doesn't take a great time. Maybe people work very slowly in athletic departments. But I'm sort of amazed that you said the amount of time it takes because I've gone through great numbers. There's a gentleman from the press, from the Chronicle of Higher Education here today, who went through all Division IA schools, well over 100, and it took an amount of time, but that, even there, was not a huge burdensome thing.

So I guess just this idea of "Why not open your books?"—if you're not hiding anything, no problem.

Mr. **Henry**. One of the biggest sections—and most of our hearings on these extended on the Higher Ed Reauthorization Act are on the difficulties in the Student Aid program. And, of course, we're dealing there with aid programs based, primarily, on financial need.

We really don't have, other than basically saying you have to justify your position to be a student, we don't have extensive merit-based Federal scholarships. We have our military academy appointments, we have these new science scholarships from the last year. We have very little by way of any kind of merit-based, they're financially need.

And your athletic programs, of course, basically run on merit-based scholarships in terms of athletic ability maybe not academic ability. Now, I know that NCAA rules are digging into that and there are some reforms in the last 2 years that you've stood by, and I commend you for that.

But I'm wondering if Dr. Sperber has done any relationship in the number of merit-based scholarships by way of departmental enrollments in athletic departments vis-a-vis let's say physics, chemistry, foreign language, English, economics, social science, history. Do you have any comparisons on ratios?

Mr. **Sperber**. Well, it depends on the school and the division of play, but they tend to be much higher than pure academic scholarships. Most regular students who receive scholarships receive financial aid.

One of the interesting thing that you touch upon that the NCAA and their academic reporting forum gives information about is what are called "special admits." Every school has a certain number of students who they admit who do not qualify under normal admission regulations. For instance, when I was at that University of California, Berkeley, they had what they call the 2 percent rule and it was mainly for Asian-American kids who were math wiz's but English was a very distant language for them and, obviously, these students belong in the universities.

Well, athletic departments long ago figured out the special admit loophole and recently the Chronicle of Higher Education went through the NCAA reporting forms and came up with brilliant statistics. I'll give you my own school, for example, 6 percent of Indiana's students are admitted as special admits, but 28 percent of the athletes are admitted as special admits.

And what was really fascinating was that only 26 percent, I believe, of the football and basketball players, whereas a very high percentage of the nonrevenue sports athletes were admitted as special admits. I think at some schools like Stanford, as Mr. Geiger pointed out, they turn out to be regular students. But at many other schools because these nonrevenue sports have become such a big thing, they're less and less regular students.

Going through the special admit shows some amazing things. My alma mater as an undergraduate was Perdu, and I'm very proud to see that only 1 percent of all Perdu students were special admits. And less than 1 percent of the athletes, which could also explain why Perdu is at the bottom of the big ten in athletic wins.

So I think a whole sort of subculture has grown around the athletic department that eats away at the university not simply in these financial areas, but also in the area of admissions. Now, regular students are very aware of the special admits, the athletic scholarships, for a skill, not for academics, but for this nonuniversity skill. And I find that rather than breed school spirit, it tends to foster a tremendous amount of cynicism on the part of regular students and faculty.

You point if this were open to the public, too, I think the public would be increasing exercised about what's happening in higher education at a time where, as you point out, we're not competing globally as well as we should. Our classes are getting bigger. Some studies show that our students are less and less educated. Meanwhile, there's this black hole over in the athletic department that's sucking up huge amounts of money.

I'll give you a perfect personal example. Every year at Indiana I teach freshman English. Because of our financial constraints, we are teaching it—I have to teach it in a class of 150 students. I have to teach students to learn to read and write at a university level in this huge sort of operation. Meanwhile, the athletic department budget at Indiana last year, their revenues and expenditures—and they lost money at the end of the year they admitted—was $30 million.

It seems to me, increasingly you're talking $30 million for beer and circus, meanwhile, the regular education part is rattling the tin cup.

Mr. **Henry**. You're introductory English classes are 150?

Mr. **Sperber**. That's right.

Mr. **Henry**. Are there any intro football classes, and what's the ratio there?

Mr. **Sperber**. Well, if you took—football coaches are very upset because, as Mr. Geiger pointed out, the NCAA has cut the number of assistant coaches allowed. But if you took the total number of coaches, as school like mine has 15, and you have 95 players on a team, which is coming down to 85, so say 15 into 85.

Mr. **Henry**. Excuse me, you said 95 coming down to 85? I thought the NFL only allowed 44 on a roster.

Mr. **Sperber**. They do. This is one of the great boondoggles in college football. I've never understood why an NFL team can manage a much more difficult schedule with, I think its 47 on a roster, meanwhile a football team needs 95 full athletic scholarships.

But as you point out, I think its these kind of financial facts—you would look at your athletic scholarship list. You would see your 95 players and such. And you would see the cost of this. At a school like Stanford, the athletic scholarship bill was over $5 million I believe, when you left.

You're talking very significant numbers, and I think the public has a right to be informed about this. And there's all kinds of myths that burden any public discussion of college sports. Such as the number one one, that it makes money for the schools involved. But I think if the public became aware of just the financial facts, I think the public would get behind the reform movement.

Indeed, Mr. Geiger is one of the real reform ADs but, as he knows better than I, there's a world of ADs and coaches out there that don't want any reforms, and some of them have very powerful backers, both on boards of trustees and within their regions.

But it would seem to me if the public can get behind this whole question and put a little backbone in the presidents, I think you might get real reform. And the best way is to open the books, allow the press in, allow researchers in, and to inform the public.

Mr. **Henry**. Madam Chair, you've been generous, and it's late so I have one final question—Mr. Geiger, in closing then, I'll give you the last word—which I think is kind of generous of me, given my interest in the bill. Why then, don't you want open disclosure and sunshine on the records? And why would not, in light of Dr. Sperber's comments, actually assist the reform movement, because it's open for everyone to see what you do? And can't you take pride in that?

Mr. **Geiger**. Well, in fact—again, I'll repeat what I said in my testimony. I think there's a fair amount of sunshine now. And I think most of us are disclosing a great deal and will disclose a great deal more as we get into NCAA directed, NCAA led reform movements. And I think we ought to be encouraging our chief executive officers to do this without the overlay of Federal legislation.

I think its time for the higher education community to close ranks and to accomplish the goals of the Night Commission and the President's Commission of the NCAA and accomplish some of the kinds of things you're talking about, some of the kinds of things Dr. Sperber talks about—although I don't agree with all of them—and some of the things I've said.

I think that we're on our way. And, I think, left to that, with your scrutiny and with the scrutiny of the public, I think that we'll deliver.

Mr. **Henry**. Thank you.

Thank you, Madam Chair.

Mrs. **Lowey**. Thank you. And I want to thank you for your testimony today. It certainly opened my eyes and gave me information that I didn'y have the foggiest notion existed. And I appreciate your input.

And I still am puzzled, Mr. Geiger, as to why the additional incentive that could be provided by this legislation to encourage those who might not be as forthright as yourself would be in any way damaging.

Mr. **Geiger**. I don't think its necessarily damaging, I just don't think its necessary.

Mrs. **Lowey**. Thank you very much.

[Whereupon, at 1:20 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Additional material submitted for the record follows.]

AMERICAN COUNCIL ON EDUCATION
Office of the President

May 31, 1991

The Honorable William D. Ford
Chairman
Subcommittee on Postsecondary Education
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the American Council on Education, an association of over 1,600 colleges and universities, we are submitting this letter for inclusion in the record of the hearings of the Subcommittee on college athletics financial disclosure and public accountability.

ACE supports the position of the National Collegiate Athletic Association that accountability for operation of the intercollegiate athletics program should reside with the institutional chief executive officer and ultimately with the institutional trustees. We believe that ample requirements exist under current NCAA rules to assure this accountability, and that at least at the present time, federal legislative activity to reinforce such accountability is premature and unnecessary.

ACE's position is this regard derives in major part from its confidence that the process of self-analysis and reform in intercollegiate athletics matters, now seriously underway in the postsecondary-education community, has already shown significant results and, most important, is being aggressively led by the NCAA Presidents Commission and the institutional chief executive officers themselves. In common with the NCAA, the ACE is firmly committed to the process of self-regulation -- by educational institutions acting singly and in concert - and believes that no need presently exists for further federal involvement in intercollegiate athletics affairs.

Sincerely,

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President

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ISBN 0-16-035677-6
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